

No. 2413

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME III.
(Pages 705 to 1120, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

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Northern Division.

(Testimony of Emar Goldberg.)

Q. Now, Mr. Goldberg, I want you to tell these twelve men whether or not you loaned Mr. Kettlewell any moneys?

A. Yes, sir, I loaned Mr. Kettlewell all told \$225 in three sums of \$75 each.

Q. What was the largest of those amounts that you loaned him? A. \$75.

Q. Have you ever had any of those sums returned to you? A. No, sir.

Q. In consideration of giving those moneys to him, or loaning them to him, did you ask him to violate any rule of the Navy Pay Office? A. No, sir.

Q. Did you ask him to give to you or your concern any advantage not enjoyed by other concerns?

A. No, sir.

Q. And did you derive any personal benefit of any kind or character out of those personal loan transactions? A. No, sir.

Q. Did he ever promise to repay to you those sums? A. Yes, sir.

Q. Has he ever done so?

A. Never repaid a cent of it.

Q. I believe you testified that at one time he approached your home. [644—593] Can you recall the time and the hour?

A. It was about a year later; it was late in 1909 he came out. He telephoned to the house one night saying that he wanted to see me—

Mr. ALLEN.—You didn't fix the time.

Mr. SCHLESINGER.—What time, what month?

A. That was late in 1909; I don't recall; almost a year and a half afterwards, after I had been trying

(Testimony of Emar Goldberg.)

to get this money back from time to time again. He told me then that he had to have some money, that he had to pay a bill the next day, and wanted a hundred dollars, or a hundred and twenty-five, I don't recall which, and I told him that I didn't have the money to spare. I had lost a great deal of money at that time in the lumber business, and it took every cent I could get hold of to keep myself going.

Q. Now, I will ask you in regard to the so-called "bribe" account, or bonus account.

A JUROR.—Can a juror ask the witness here a question?

The COURT.—Certainly.

A JUROR.—I wanted to know if he ever took a note for this money or an I. O. U.?

A. No, sir.

Q. Never did? A. No, sir.

Mr. SCHLESINGER.—Mr. Goldberg, without wasting time, you have examined this account so often referred to, have you not?

A. The bonus account?

Q. Yes. A. Yes, sir.

Q. Do any of those items upon that account refer to moneys given by you to Mr. Kettlewell? [645—594] A. No, sir.

Q. Did you pay out any of those moneys for the purpose of enabling you to gain any advantage?

A. No, sir.

Q. I will ask you whether any of those payments have any reference to any of the Government checks

(Testimony of Emar Goldberg.)

received by the Great Western Smelting & Refining Company.

A. They have none whatsoever.

Q. I will call your attention to the first item appearing on that check, on this account, dated April 27, 1908, in the sum of \$500. To what does that item, if you know, have reference?

A. I drew \$500 on the 27th of April, deposited to my account in the National Bank of Commerce, made out a check for \$500 to the account of the Great Western Lumber Company and deposited it in the Scandinavian-American Bank, and it shows on the books of both companies today.

Q. And has the Scandinavian-American Bank, which is not a party to this alleged conspiracy, has that bank that original deposit slip? A. Yes, sir.

Q. I will show you what purports to be a copy of that original deposit slip and ask you whether it is a true copy thereof? A. Yes, sir.

Mr. SCHLESINGER.—I assume you will not require us to produce the original?

Mr. KERR.—That has the stamp of the bank on it.

Mr. SCHLESINGER.—Mr. Allen, do you wish to see it?

Mr. ALLEN.—I would prefer you to put it in an orderly way. The bank testimony is the best testimony in the world on that.

Mr. SCHLESINGER.—Well, we will corroborate it by the bank's testimony. [646—595]

Mr. ALLEN.—Well, do so.

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—I will ask you whether or not you know who wrote upon that deposit slip the word “Duplicate”?

A. I asked Mr. Woolfong down to the Scandinavian-American Bank to give me a duplicate of the deposit made on the 27th of May, 1907, and he handed this slip to me.

Q. And is that a duplicate? A. Yes, sir.

Mr. SCHLESINGER.—That, if your Honor please, we will offer in evidence as part of the examination.

Mr. ALLEN.—We object on the ground it is immaterial, irrelevant, incompetent and not the best evidence.

Mr. SCHLESINGER.—We will withdraw the offer and have it marked now for identification only.

(Paper referred to marked Plaintiff’s Exhibit “A-27” for identification.)

Q. Mr. Goldberg, I will direct your attention to another item appearing in that account of June 1st in the sum of \$500. Do you know whether or not, that item has any reference to any Government transaction? A. It has none whatsoever.

Q. Did you pay that sum?

Mr. ALLEN.—What is the date of that?

Mr. SCHLESINGER.—That is June 1st. Did you pay that sum out to Mr. Kettlewell, to Mr. Meyer, or to any other Government employee by way of commissions or by way of *their* in any alleged profit? A. No, sir.

Q. Without going over all of these items one by

(Testimony of Emar Goldberg.)

one, because I shall produce an accountant, if your Honor please, at some subsequent stage of this case, did you pay any of these sums [647—596] mentioned in this bonus account to any government employee by way of commissions or profits, or for any other purpose? A. No, sir.

Q. Do these expenditures represent legitimate expenditures upon your part? A. They do.

Q. And have they any reference to any receipt by the Great Western Smelting & Refining Company of moneys from the Government? A. No, sir.

Q. Did you ever agree to pay Mr. Kettlewell twenty per cent of the profits of the Great Western Smelting & Refining Company? A. No, sir.

Q. Did you ever agree to pay Mr. Meyer twenty per cent additional? A. No, sir.

Q. Of the profits of the Great Western Smelting & Refining Company? A. No, sir.

Q. Did you have any authority, implied or express, to make any such arrangement?

A. I had none whatsoever. There wouldn't have been any profits left.

Q. Well, were you authorized? A. No, sir.

Q. Were you authorized to dispose of the profits of the Great Western Smelting & Refining Company in the city of Seattle? A. No, sir.

Q. Did you ever discuss with Mr. Alper, or the president of the parent concern in Chicago, or any other official of that company, the advisability of having Kettlewell and Mr. Meyer participate in the profits of this concern, or in any of its branches?

(Testimony of Emar Goldberg.)

A. No, sir. [648—597]

Q. Have you ever figured up for the purpose of ascertaining whether any of these sums represent 20 per cent, 40 per cent, or any other per centum of the transactions had through this Navy Pay Yard?

A. They can't represent anything because they have no relation to it whatsoever.

Mr. SCHLESINGER.—Did you ever have any authority to dispose of the profits of this concern?

A. No, sir.

Q. Have you ever been called upon or obligated to advance money out of your own pocket for the benefit of the concern? A. No, sir.

Q. Have you ever personally, to the extent of a single dime, profited by this transaction?

A. No, sir.

Q. Did you ever tell Kettlewell to insert five days in any proposed bid?

A. I never told *told* Kettlewell to insert \$5 or anything else on any bid.

Q. Did you ever enter into any contract of any kind or character with him? A. No, sir.

Q. You have heard mentioned in this courtroom repeatedly the name of an alleged concern, Lyman-Evans & Company. Do you know who was the author of that concern?

A. I have heard it in the courtroom.

Q. Had you known previously?

A. Not till I heard it in the courtroom.

Q. Had you any interest of any kind or character in that concern? A. No, sir.

(Testimony of Emar Goldberg.)

Q. Do you know a concern called Smith-Hunt & Company?

A. Just heard the name in the courtroom. [649—598]

Q. Did you have any interest in that concern?

A. No, sir.

Q. Did you know of its previous existence?

A. Not until I heard of it. I am under the impression that was mentioned to me by Mr. House one time, or Mr. Bryan, I think.

Q. You mean by Mr. House, the Mr. House who has been experting these books for some two and a half years? A. Yes.

Q. This Mr. House (showing)? A. Yes.

Q. Do you know a Mr. Peter Brandt?

A. Only as I have heard the name mentioned in the courtroom.

Q. Had you any interest of any kind or character in the business of Mr. Peter Brandt? A. No, sir.

Q. Did you have any interest of any kind or character in any of the transactions of Kettlewell, whether conducted in his own name or under fictitious names? A. No, sir.

Q. Do you know his brother-in-law or relative P. McManus?

A. I have met him since these indictments were brought.

Q. Did you know that his relative P. McManus had put in a bid covering this same transaction?

A. After the bids were opened. I didn't know it

(Testimony of Emar Goldberg.)

was his relative or that he was any relative to him at that time.

Q. Did you have any interest of any kind or character in that bid? A. No, sir.

Q. Did you invite it? A. No, sir.

Q. Did you ever talk with Mr. McManus upon the subject?

A. Never met Mr. McManus until after these indictments were brought. [650—599] never knew who he was.

Q. Do you know this defendant Mr. Meyer?

A. Yes, sir.

Q. And how long, please, have you known Mr. Meyer, Mr. Goldberg? A. Oh, about ten years.

Q. Did you ever enter into any conspiracy of any kind or character with Mr. Meyer to defraud the Government? A. No, sir.

Q. Did Mr. Meyer ever tell you to pay money to Kettlewell?

A. Mr. Meyer never told me anything about Kettlewell.

Q. Did Mr. Meyer ever demand or receive from you any proportion of the profits of the Great Western Smelting & Refining Company? A. No, sir.

Q. Did Mr. Meyer ever apply to you for any loans?

A. No, sir.

Q. Do you know Mr. Ray Spear? A. Yes, sir.

Q. The former paymaster? A. Yes, sir.

Q. You have seen him frequently, have you not?

A. Yes, sir.

Q. In the Navy Pay Office?

(Testimony of Emar Goldberg.)

A. No, at the navy yard.

Q. In the navy yard, yes. You likewise know Mr. Mell and Mr. Brown, who were connected with that office?

A. Yes, sir.

Q. Did you ever have any arrangements with them of any kind or character giving to the Great Western Smelting & Refining Company any advantage in the matter of bidding?

A. No, sir.

Q. Were you ever advised or instructed by your concern to secure any [651—600] advantage in the matter of bidding?

A. No, sir.

Q. You have heard, Mr. Goldberg, the testimony of Mr. Kettlewell that you gave him at some unnamed time and for some unnamed purpose the sum of \$350. What is the fact about that?

A. I never give Kettlewell \$350 in all his life.

Q. And you don't intend to during your life, if you can help it?

A. No, sir.

The COURT.—Proceed.

Mr. SCHLESINGER.—You have seen here this check, this Government exhibit, this large check. When did you receive that check?

A. On the 26th day of May.

Q. Of what year?

A. 1908.

Q. From whose hands did you receive that check?

A. From Mr. Kettlewell.

Q. How did you happen to know that that check was ready for you?

A. On the morning of the day that I received the check Mr. Kettlewell telephoned down to our office and told me that the check for the Fowler Metal Com-

(Testimony of Emar Goldberg.)

pany was ready, and that he knew that it belonged to the Great Western Smelting & Refining Company. So I went up there to get it.

Q. And what did Mr. Kettlewell say to you when you called for that check?

A. I went up to the office and I asked him for the check, and he said, "Well, you are not going to get this check," or words as near as I can remember, "You are not going to get this check, because you are not entitled to it. The material will be rejected, and P. McManus was the lowest legitimate bid in there when that zinc was ordered." I told him that the material had [652—601] been delivered by the Great Western Smelting & Refining Company, that there was absolutely no question about it, that the Fowler Metal Company belonged to the Great Western Smelting & Refining Company, that I didn't know how he found it out, but as long as he knew it the check was the property of the Great Western Smelting & Refining Company and we were going to get it. "Well," he said, "you won't get it and that is all there is to it." I says, "Well, I will go down and consult our attorneys about it and see whether I get it or not." So I went down to see Mr. Kerr. I told Mr. Kerr the circumstances, and he told me to go up and make a formal demand on Kettlewell for the check. So I went back there; I had to wait quite a little length of time for Mr. Kerr, because he was busy in the office there—and when I got back it was after banking hours, and I went back there again to see Mr. Kettlewell and told him I had been to see

(Testimony of Emar Goldberg.)

our attorneys, that I was told to call and make a formal demand on him for that check. He looked at me a minute or two and didn't say anything, and finally he went up and got the check and says, "Well, you can have this check, but I will tell you right now you will never get the money on this check." He says, "You can take it." "Well," I says, "I don't know whether we will get the money or not, but I will take the check anyway."

Q. What date was it that you received the checks from his hands? A. On the 26th day of May.

Q. Well, after having physically gotten the check how long did you retain it in your possession, and why?

A. After we got the check I was afraid that perhaps they would reject the zinc, or do something, I didn't know what authority he had or what he could possibly do, so I took the check down to the office and we kept it there for four or five days, thinking [653—602] perhaps that the Paymaster or someone might call us up and tell us to return the check, or tell us the material was going to be rejected or returned, or something; and it was on Friday or Saturday that finally I decided we would deposit the check, and I called up Mr. Silverstone and asked him to come down town so he could deposit the check, because he had originally made out the bid.

Q. In other words, you receive that check upon the 26th day of May, and that check rested in your office until the 31st day of May?

A. Until the 1st day of June.

(Testimony of Emar Goldberg.)

Q. 1st day of June? A. Yes, sir.

Q. Uncashed? A. Yes, sir.

Mr. SCHLESINGER.—What, if anything, accompanied that check?

A. What they call a public bill.

Q. Have you that public bill with reference to this?

Mr. ALLEN.—It is in evidence.

Mr. SCHLESINGER.—What is the number of the exhibit?

Mr. SHIPLEY.—Why, it is here, Mr. Schlesinger.

Mr. SCHLESINGER.—I will ask you whether this so-called public bill accompanied that check.

A. Yes, sir, this public bill was with the check.

Mr. KERR.—Refer to it as an exhibit number.

Mr. SCHLESINGER.—Yes. This is Defendants' Exhibit letter "G."

Q. What did you do with this public bill at the time that it was given to you by Kettlewell together with the check?

A. Put the bill in our files, put this in our files.

Q. On what date?

A. On the 26th day of May, 1908. [654—603]

Mr. SCHLESINGER.—I will ask you gentlemen to look at that, please (handing same to juror).

Mr. KERR.—Has that been offered in evidence?

Mr. SCHLESINGER.—Yes, Mr. Kerr, offered in evidence by the defendant.

Q. Did the Government ever stop payment on that check?

A. No, sir, nothing more was heard or said about it.

Q. During those five days did you hear a single

(Testimony of Emar Goldberg.)

word of complaint from that office?

A. No, sir, not a word.

Q. Was there anything to have prevented you from securing money on that check on the 26th day of May?

A. No, sir—well, I didn't get the check until after banking hours. I could have secured the money on the 27th.

Q. What was the 27th, was it a holiday or week day? A. No, sir.

Q. A week day? A. A week day.

Q. And the banks of Seattle were open?

A. Yes, sir.

Q. Transacting business. To whom did this zinc bill which was sold to the Government go?

A. To the Great Western Smelting & Refining Company and the W. A. Corder Company.

Q. In equal proportions? A. Yes, sir.

Q. Did you personally have any interest in the proceeds of that transaction? A. No, sir.

Q. And what became of the proceeds, how were they divided?

A. The books show that when the check was received one-half the amount of it was credited to the Corder Company, just in exactly [655—604] the same way that one-half the original charge was credited to them, charged to them.

Q. And was that the same course that you pursued with respect to sales to the general trade?

A. Yes, sir.

Q. Joint sales?

(Testimony of Emar Goldberg.)

A. Identically the same way; all zinc sales were handled the same.

Q. Did Mr. Corder receive one-half of the profits?

A. He did.

Q. Did you make any deduction from that check or otherwise? A. No, sir.

Q. In the settlement that you had with Corder & Company did he pay you any money in any settlements? A. Yes, sir.

Q. And do the books show it? A. Yes, sir.

Q. Had Mr. Corder purchased one-half of this zinc before its delivery to the Government?

A. Yes, sir.

Q. And had he paid for his one-half?

A. Yes, sir.

Q. I would like to have now the M. & H. correspondence (same being produced). I will call your attention to a letter from Matheson & Heggler Zinc Company dated February 8, 1908, and marked Defendants' Exhibit "4." I will ask you whether or not your concern received that letter in due course of business. A. Yes, sir.

Q. Did you read the slip pasted upon that letter?

A. Yes, sir.

Q. Did you understand it?

A. Yes, sir. [656—605]

Q. Did you know that the Government had tried to buy zinc from this concern?

A. I knew it when I received that letter. Or before, I think, they wired us. I think Matheson &

(Testimony of Emar Goldberg.)

Heggler wired us they had an inquiry from the Government.

Q. You were a valuable customer, that is, the Great Western Smelting & Refining Company, of this concern?

A. The Great Western had purchased several cars from them. I would think they purchased five or six straight carloads besides a number of smaller purchases.

Q. Are you authorized to fix the amount of profit which the Great Western Smelting & Refining Company shall make in its business?

A. All the business that is done by the Great Western Smelting & Refining Company at Seattle is reported to Mr. Alper at San Francisco, and if there is anything at all that is not satisfactory to him he doesn't hesitate to say so.

Q. How often do you make reports?

A. Every day; every item.

Q. What would happen if you failed to make a report every day?

A. We would get a letter wanting to know why the report didn't come in.

Q. Did you regard the profit in this particular case as a reasonable one?

A. Yes, sir, based on the circumstances surrounding the purchase.

Q. Was there or not material in Seattle at that time available? A. Not to my knowledge.

Q. Did you have the only material that was available in large lots?

(Testimony of Emar Goldberg.)

A. I think the Great Western had the only available supply of zinc in town at that time.

Q. Had you ever made sales to the trade generally prior and subsequent to this time at practically the same figure? [657—606] A. Yes, sir.

Q. To merchants?

A. Merchants, manufacturers.

Q. Just mention just about three or four of such names.

A. The Moran Company, Seattle Construction & Drydock Company now, the Hefferman Drydock Company, the Lloyd Manufacturing Company. They purchased several lots at twelve and a half cents per pound.

Q. How do those figures correspond, or rather compare, with the figures received from this sale to the Government? A. Practically the same.

Q. Had you ever sold to the Government at higher figures? A. At much higher figures.

Q. How much higher?

A. Sixteen cents a pound.

Q. Had you ever sold to the Government at fourteen cents a pound?

A. Fourteen, fifteen and sixteen, if my memory serves me.

Q. And have those transactions, so far as you know, met with the approval of the Secretary of the Navy at Washington, D. C.?

A. Never had any complaint. That was sometime previous to this sale.

Q. You never had any complaint?

(Testimony of Emar Goldberg.)

A. No, sir. That was, I believe, in 1907.

Q. And was that before Kettlewell had ever tried to borrow any money from you?

A. Considerably before, some of it was.

Q. Have any of the officials of the Great Western Smelting & Refining Company been indicted?

A. No, sir.

Q. Has any suit or suits been brought against that concern to recover any money?

A. No, sir. [658—607]

Q. Did you have any business dealings, or your concern, with the Department at Washington direct?

A. Yes, sir.

Q. Many of them?

A. Why, a great deal more than through the Navy Pay Office in Seattle.

Q. There has been some question here as to an excess delivery of some 9,000 pounds. How did you and Mr. Corder come to deliver 9,000 pounds more than was called for in the requisition? Please explain that to the jury.

A. The proposal or award called for 50,000 pounds. When the car came in there was 50,000 pounds in the car, but we had between nine and ten thousand pounds of it on hand. We talked the matter over and decided that if they were so anxious for 50,000 pounds over there they would probably take this nine or ten thousand pounds that we had on hand.

Q. For the battleship fleet?

A. For the battleship fleet. The battleship fleet was due here then. If they didn't take it the worst

(Testimony of Emar Goldberg.)

that could possibly happen would be they would reject it and we would have to take it back again. That wouldn't amount to a great deal.

Q. Did you know at that time that there was such a body as a Board of Inspection at this navy yard?

A. Certainly.

Q. Did you know who comprised that Board.

A. I didn't know who comprised the Board. I knew it was comprised of a couple of officers, or three officers.

Q. Just mention their names.

A. I don't remember the names of them.

Q. Did you have any combination or agreement with the members of that Board of Inspection that they should accept this excess [659—608] delivery?

A. I don't think I ever knew who a single member of the Board was. I knew the Board was generally composed of two officers, or one officer, or three officers, something like that, but as far as knowing them was concerned, I never knew who the members of the Board were.

Q. Is it possible to sell any supplies to the Government without the Board of Inspection inspecting such supplies as to weight, as to quality and as to price?

A. I don't think so. Generally understood that everything that is sold to the Government has to be passed by a Board of Inspection.

Q. And did you know that at the time of this delivery? A. Yes; everyone knows that.

(Testimony of Emar Goldberg.)

Q. Mr. Spear, will you let me have the names, please, of those officers (consulting with Mr. Spear). And do you not know that Captain Stacey Potts was the senior member of that Board?

A. I didn't know who was the member of that Board.

Q. Have you ever met him?

A. I probably called on him. Someone in his office might have telephoned over to us and asked us some question, or in going over there I might have walked into his office, but I never knew who he was. I might have known who he was, might have been introduced to him or met him, but I don't recall.

Q. I believe that you have testified, Mr. Goldberg, that you sold zinc to the Moran Company, to the Seattle Construction & Drydock Company, to the Heffernan Drydock Company, to the Lloyd Manufacturing Company, and a large number of other concerns at even still higher prices, is that true?

A. Yes, sir.

Q. Do you know what amount of business, approximately, the Great [660—609] Western Smelting & Refining Company, through this branch, did in the year 1907?

A. The office of the Great Western Smelting & Refining Company, from about the 1st of April, 1907, to the 1st of April, 1908, was about 225 to \$250,000.

Q. And I will ask you to tell these gentlemen what were your sales through this Navy Pay Office during that same period of time.

A. About \$5,000, probably less.

(Testimony of Emar Goldberg.)

Q. \$5,000 out of a business of nearly \$250,000?

A. Yes, sir.

Q. For that same year, is that true?

A. Yes, sir.

Q. Do you know, and do your books show, the amount of business of the Great Western Company's branch in Seattle from 1908 to 1909? A. Yes, sir.

Q. What was it?

A. Between two hundred and two hundred and twenty thousand dollars.

Q. And what amount of material was sold by your concern through this Navy Pay Office for the same period?

A. About,—between ten and twelve thousand dollars.

Q. And of that sum how much did Mr. Corder's company get? A. A little less than one-half.

Q. Do you know the amount of your business, or the business of your concern in Seattle, from 1909 to 1910?

A. The current year of about May or June to June, was about three hundred to three hundred and fifty thousand dollars.

Q. And of that amount how much went through this Navy Pay Office?

A. About two thousand or \$2,500.

Q. I want to say for your benefit, Mr. Goldberg, that I think you are mistaken by about \$1,000. [661—610]

Mr. SCHLESINGER.—Do you know the amount of business of the Great Western Smelting & Refin-

(Testimony of Emar Goldberg.)

ing Company at this branch between 1910 and 1911?

A. *Out* fiscal year 1910 to 1911, the business was between three hundred and seventy-five and four hundred thousand dollars.

Q. And of that amount how much was transacted with this Navy Pay Office?

A. I don't think it amounted to \$1,000.

Q. And, for the purpose of transacting that vast amount of business, did you use this as a bribe fund?

A. Never used that in that connection whatever.

Q. Did you use any bribe funds to secure business from merchants? A. No, sir.

Q. Or from anybody? A. No, sir.

Q. Did this Navy Pay Office at Seattle, through Mr. Kettlewell, or anyone else, ever call up the Great Western Smelting & Refining Company's branch and ask if they had certain classes of materials on hand?

A. Yes, sir.

Q. Well, just tell what happened in that respect?

A. The Navy Pay Office here, as well as the different departments of the Navy Yard themselves, would telephone and ask if we had a certain class of material. I recall one instance in which they telephoned over in regard to some sand. They telephoned two or three times. And another instance, they telephoned about 400,000 pounds of scrap lead, and wrote us a letter about it afterwards. In another instance they telephoned in regard to some of these plates, some one from one of the departments at the yard, I don't recall whether it was the Engineering Department, I never kept very good track

(Testimony of Emar Goldberg.)

of that and I never did know [662—611] very much about the different departments of the yard, but somebody called in regard to certain sizes of zinc plate and asked if we had them, and said they were using considerable, and if we carried them in stock, and I told them I thought we were going to carry them in stock from then on.

Q. Was there anything to your mind strange about the Navy Pay Office, or any of its men calling you up on matters of this character?

A. Nothing strange whatsoever about it. It was done in the regular course of business.

Q. Did they call up merchants generally?

A. I imagine they would call up merchants generally if they would call us up.

Q. Did you receive any information as a matter of confidence from any employee there?

A. No, sir.

Q. Did you receive any previous advance information to which you were not entitled? A. No, sir.

Q. When was the last time, Mr. Goldberg, you ever had a conversation of any kind or character with this man Kettlewell?

A. About the 28th of March, a day or two before he was arrested.

Q. What is that, Mr. Goldberg?

A. A day or two before he was arrested.

Q. What was that conversation, or where was it?

A. I was in a bootblack-stand having my shoes shined just across the street from the Butler, and he walked along early in the morning and I called him,

(Testimony of Emar Goldberg.)

and I bent over and asked him if he couldn't let me have some of that money, because I needed it, and he said he would let me have it in a week or two; and at the same time he asked *him* if I knew who Lyman-Evans & Company [663—612] were. It seems to me the day before that I had been over to the navy yard and Brown and I am under the impression, not Mr. Spear, but Mr. Mell, and another officer who were in the office there, asked me about the price of ferromanganese, and also asked me if I knew a firm named Lyman-Evans & Company, St. Louis. I told him I had never heard of that firm, but I would find out for them. They told me, "Never mind, don't do anything about it." So I asked—when Kettlewell was leaving I says, "By the way, Mr. Kettlewell, do you know a firm called Lyman-Evans & Company," and he says, "Why, yes, they are a firm in St. Louis."

Q. Did you have any other conversation with him?

A. No, sir, that was all.

Q. Now, this conversation that you had at the Navy Pay office, that occurred—

Mr. SHIPLEY.—Mr. Schlesinger, it was the Storekeeper's office.

Mr. SCHLESINGER.—At the storekeeper's office, occurred about when?

A. Occurred the previous day. That was over at the navy yard.

Q. And with whom was that conversation had?

A. It was directly with Mr. Brown.

Q. He asked you whether you know of such a con-

(Testimony of Emar Goldberg.)

cern dealing in metals?

A. Yes, he asked me about the price of ferromanganese, and if I knew of such a concern dealing in metals, and so on.

Q. And he knew that the Great Western Smelting & Refining Company had branches all over this country, did he not? A. Yes, sir. [664—613]

EMAR GOLDBERG, direct examination (resumed).

(By Mr. SCHLESINGER.)

Mr. ALLEN.—It is stipulated, your Honor and Gentlemen of the Jury, by and on behalf of the defendants, that Mr. Fowler, who was yesterday called as a witness, if recalled to the stand, would testify that the Fowler Metal Company, whatever concern it is, had never filed at any place in the State of Washington, any certified copy of Articles of Incorporation, and never filed any certificate of partnership or any other declaration which would inform any other person in the State of Washington of their purpose or desire to do business in this case.

Mr. SCHLESINGER.—That is the fact, subject to the objection of materiality.

Q. Mr. Goldberg, I will show you a letter, upon the letter-head of W. A. Corder, and bearing date August 20, 1907, addressed to the Great Western Smelting and Refining Company and signed W. A. Corder Company, per W. A. Corder. Did you receive that letter, at your usual place of business, in due course? A. Yes, sir.

Mr. SCHLESINGER.—If your Honor please, we

(Testimony of Emar Goldberg.)

will now offer this in evidence.

Mr. ALLEN.—No objection.

(Whereupon said letter was introduced in evidence and marked Defendants' Exhibit "A-28.")

Q. Did this letter indicate the understanding, as it then existed, between the Great Western Smelting and Refining Company and W. A. Corder Company? [665—614] A. It did.

Q. I will show you a letter, upon the letter-head of the Navy Yard, Puget Sound, Washington, bearing date October 10, 1907, and purporting to have been signed by Jonathan Brook, Paymaster, U. S. Navy, General Storekeeper. Did you receive that letter in due course of mail, on or about its date?

A. Yes, I received that letter.

(Whereupon said letter was marked Defendants' Exhibit A-29 for identification.)

Mr. ALLEN.—We object to this on the ground it is incompetent, irrelevant and immaterial, and has no possible bearing upon any matter now pending before the jury.

By the COURT.—The letter says this material is urgently needed for a very important work, and I think, standing alone, the letter is not material, if there is nothing else to be connected—

Mr. SCHLESINGER.—I desire to connect it up by showing that to have been the usual custom and the same conditions obtained to the zinc in question.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED. You may reoffer it.

(Testimony of Emar Goldberg.)

Q. I will show you another letter dated Navy Yard, Puget Sound, Washington, April 29, 1908, and signed by Ray Spear, Paymaster of the U. S. Navy, General Storekeeper, and addressed to the Great Western Smelting and Refining Company. I will have you please examine that letter and state whether or not it was received by you in due course of business.

A. That came through the mails in the regular course of business. [666—615]

Mr. SCHLESINGER.—We offer that in evidence.

Mr. ALLEN.—I have no objection to that.

(Whereupon said letter was admitted in evidence, marked Defendant's Exhibit A-30, and read to the jury.)

Q. I will show you a letter dated April 15, 1908, and purporting to have been signed by Ray Spear and addressed to the Great Western Smelting and Refining Company. Did you receive that letter in due course of mail?

A. This letter came to our office in the regular course of business.

Q. Did you invite the sending of that letter?

A. I did not.

Mr. SCHLESINGER.—We will now formally offer that particular letter in evidence.

Mr. ALLEN.—Does it relate to any matter already in evidence?

Mr. SCHLESINGER.—I think so.

Mr. ALLEN.—On the statement of counsel it does

(Testimony of Emar Goldberg.)

have that relation, I don't object.

Mr. SCHLESINGER.—If it shouldn't I will consent it may go out. That is my understanding.

(Whereupon said letter was admitted in evidence, marked Defendants' Exhibit A-31, and read to the jury.)

Q. I will call your attention to a paper in print, captioned for your bookkeeper and invoice clerk, and signed Ray Spear, Pay Master, United States Navy, General Storekeeper, and ask you whether or not you received that in due course of business?

A. That came to our office in the regular mail.

Mr. SCHLESINGER.—We will offer this, have this identified and then [667—616] formally offer it in evidence.

(Whereupon said letter was marked Defendants' Exhibit A-32 for identification.)

Mr. SCHLESINGER.—I understand you admit, do you, Mr. Allen, that the printed document was sent to all merchants and contractors having business with that Navy Pay Office?

Mr. ALLEN.—Mr. Spear states that is a custom of the office. I will state to the jury that is not a personal letter.

Mr. SCHLESINGER.—That was not a letter personally to the Great Western Smelting & Refining Company?

Mr. ALLEN.—No.

Mr. SCHLESINGER.—Could you let me know, Mr. Spear, please, about the probable time of the sending out of this communication?

(Testimony of Emar Goldberg.)

Mr. SPEAR.—As to this particular year?

Mr. SCHLESINGER.—No, all of them.

Mr. SPEAR.—I think it probably was a form kept in the office and used every time a new dealer appeared on the scene, who wasn't familiar with the Government's methods of doing business.

Mr. SCHLESINGER.—Sent out from time to time?

Mr. SPEAR.—Yes, sir, simply a form.

Q. I call your attention, Mr. Goldberg, to what purports to be a carbon copy of a letter signed "Great Western Smelting & Refining Company and addressed to Mr. Ray Spear, Paymaster, United States Navy Yard, Bremerton, Washington." Did you send the original of that carbon copy to Mr. Ray Spear, in due course of business?

A. Yes, sir, that was sent to the Navy Pay Office in the regular course of business—not to the Navy Pay Office, to Mr. Spear at the navy yard.

(Whereupon said copy of letter was marked Defendants' Exhibit A-33 for identification.) [668—617]

Mr. ALLEN.—Without knowing from Mr. Spear whether the original was ever received by him, I would object to this upon the ground it is incompetent, irrelevant and immaterial.

By the COURT.—I don't think it is material. He has already testified about it.

Mr. SCHLESINGER.—This is corroborative.

By the COURT.—OBJECTION SUSTAINED:
EXCEPTION ALLOWED.

(Testimony of Emar Goldberg.)

Q. I will now show to the witness a letter dated February 6, 1908, addressed to the Great Western Smelting & Refining Company and signed by J. H. Walsh, Assistant Naval Constructor. Did you receive that letter in due course of business?

A. That letter came to the office through the mails, in the regular course of business.

(Whereupon said letter was marked Defendants' Exhibit A-34 for identification.)

Mr. SCHLESINGER.—We offer this letter in evidence.

Mr. ALLEN.—We object to this on the same grounds stated before, it is incompetent, irrelevant and immaterial, and has no possible bearing on any one of the issues submitted to this jury.

By the COURT.—I think this may go in.

(Whereupon Defendants' Exhibit A-34 for identification was admitted in evidence.)

Q. Did you make any reply likewise, in due course of events, to that particular letter?

A. We answered that letter on probably the same day it was received.

Q. I will show you a letter bearing date February 10, 1908, [669—618] addressed to the same Mr. Walsh, and signed by the Great Western Smelting & Refining Company. Is that a carbon copy of the one that you sent? A. No, sir.

Q. It is not a carbon copy?

A. No, that was a carbon copy of a letter on a different occasion, when another inquiry came to the

(Testimony of Emar Goldberg.)

same office. I think you have that answer in the files.

Q. Then I call your attention to another letter, or what purports to be a carbon copy of a letter, and ask you whether or not that was sent by you in due course of events?

A. Yes, sir, that was sent in the regular course of business, in answer to an inquiry.

Q. From whom did that inquiry come?

A. From the officer to whom it is addressed.

Q. Did you invite such an inquiry?

A. No, sir, we had no idea of it.

Q. Did you enter into any combination, conspiracy or agreement with Mr. Walsh, or any other officer there, for advance information?

A. No, sir, I don't know that I am even acquainted with Mr. Walsh. I might have met him, but I am not certain.

Q. About how many times will you say that you received letters of similar import?

A. Oh, we received many letters of that character. Any officer in the yard that was—that needed any particular item, wouldn't hesitate to telephone over to our office or write to us. That probably happened a hundred times, telephoned or wrote. They more often telephoned than wrote letters.

Mr. ALLEN.—That is on another transaction. In the light of your [670—619] Honor's ruling, I have no objection to it.

(Whereupon Defendants' Exhibit A-35 for identification is admitted in evidence.)

(Testimony of Emar Goldberg.)

Q. Did you have any conversation or communication with either Mr. Meyers or Mr. Kettlewell concerning that transaction, as to advance information?

A. There was no occasion to have any conversations with Mr. Meyers or Mr. Kettlewell concerning that matter. The letter was all the information that we required.

Q. Did you ever have any difficulty in securing information as to probable purchases on the part of the Navy Department?

A. No trouble whatever. If any department of the Navy Yard required anything, they wouldn't hesitate one second to tell you what they wanted, and when they would want it, or the quality or character of material.

Q. I will call your attention to a carbon copy of a letter addressed to Mr. R. L. Drake, Puget Sound Navy Yard, Bremerton, Washington, under date, your Honor, of December 16, 1908, and signed by the Great Western Smelting & Refining Company. I will ask you primarily, who is Mr. R. L. Drake?

A. I don't recall. He is one of the officers of heads of departments over at the navy yard at that time. The letter probably will show.

Q. Were you in any combination or conspiracy with Mr. R. L. Drake whereby your concern was to receive advance information?

A. No, sir, I don't know that I remember Mr. Drake.

Q. I will show that to the witness and ask him whether he identifies that as being a carbon copy of

(Testimony of Emar Goldberg.)

a letter forwarded in due course of mail?

A. I recall that mail. There was considerable correspondence in [671—620] regard to that.

(Whereupon copy of letter is marked Defendants' Exhibit A-36 for identification.)

Mr. ALLEN.—Does this have reference to any transaction or folder offered in evidence, or any other matter?

Mr. SCHLESINGER.—I can't tell you, because I don't know.

Mr. ALLEN.—I object to it for the same reason, all on the same basis.

By the COURT.—I don't think that this is material.

OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. Do you know whether Mr. Drake is still in the employ of the Government? A. I do not.

Q. Do you know whether Mr. Walsh is still in the employ of the Government? A. I do not.

Q. Had you sold the Government zinc prior to May, 1908? A. Yes, sir.

Q. Your concern? A. Yes, sir.

Q. At various prices? A. Various prices.

Q. What were those prices, generally speaking?

A. Ranging as high as sixteen cents a pound.

Q. I will offer them in evidence. I will show you a public bill dated January 27, 1908, a number 615. I will ask you whether or not that is a copy of the public bill given to the Government upon that occasion.

(Testimony of Emar Goldberg.)

A. Yes, sir, this is a copy of the public bill calling for the [672—621] delivery of some zinc at sixteen cents a pound.

Mr. SCHLESINGER.—We will offer this in evidence.

(Whereupon said bill was marked Defendants' Exhibit A-37 for identification.)

Mr. ALLEN.—Do you know the requisition, the number?

A. I think the requisition is already in evidence. I didn't notice the number.

Mr. ALLEN.—I would like to know the number of the requisition.

Mr. SCHLESINGER.—The number of the requisition is 193.

Mr. ALLEN.—We have no objections.

(Whereupon Defendants' Exhibit A-37 for identification was admitted in evidence.)

Q. Was this bill paid in due course?

A. Paid on the date stamped.

Q. Did you ever have any complaint from either the Department here or the Department in Washington, with respect to that particular bill?

A. No, sir, there was a rejection of 1900 and some odd pounds and afterwards purchased by the Government on another requisition.

Q. At how much? A. At 12½ cents a pound.

Q. I will now show you what purports to be a copy of a public bill for 1478 pounds of zinc plates for boilers. I will ask you whether or not you received that in due course of business.

(Testimony of Emar Goldberg.)

A. That was a public bill covering the sale of some zinc on requisition 169, inspection call 1142. [673—622]

(Whereupon said bill was marked Defendants' Exhibit A-38 for identification.)

Q. Was this bill paid in due course?

A. It was paid in the regular course of business.

Q. Did you ever receive any complaint?

A. Never received any.

Q. From this Department or the Department at Washington, either as to quality or price covering this transaction?

A. There was nothing more heard of that transaction after the invoice was paid.

Mr. ALLEN.—No objection.

(Whereupon Defendants' Exhibit A-38 for identification was admitted in evidence.)

Q. I will show you another public bill, or what purports to be a copy of a public bill, dated January 7, 1908, and calling for 3402 pounds of zinc at sixteen cents per pound. Did you receive that copy in due course of business?

A. Yes, sir, that was received in the regular course of business.

(Whereupon said copy of bill was marked for identification Defendants' Exhibit A-39.)

Q. Was this bill—which we now formally offer in evidence—any objection to it—Requisition No. 154—

Mr. ALLEN.—No objection.

Q. Was this bill paid in due course of business?

A. It was paid in the regular course of business.

(Testimony of Emar Goldberg.)

Q. Did either the Department in Seattle or Bremerton or the Department at Washington, D. C., ever make any complaint as to [674—623] quality, quantity or price covering that particular requisition? A. No, sir, nothing was said about it.

Q. I call your attention to what purports to be a copy of a public bill dated January 1, 1908, and calling for 2,795 pounds of zinc plates and for the sum of \$447.20. Did you receive that copy in due course of business?

A. That copy was received in due course of business.

Q. Was that bill paid in due course of business?

A. It was paid as stamped here, on January 8th.

Q. Did you ever receive any complaint from any one of the departments, or heads of the departments, either as to quantity, quality or price, covering that transaction?

A. Never was heard about, that is after it was paid.

Q. Any complaint made that the price was unconscionable or unreasonable?

A. No, sir, nothing was said in regard to the price.

Q. At any time? A. At any time.

Q. And is it not a fact that the transactions covered by these requisitions precede the one now under investigation, in point of time?

A. They precede the one now under investigation by several months.

Q. Did you ever enter into any conspiracy or combination with any of the officials in Washington—

(Testimony of Emar Goldberg.)

Mr. ALLEN.—Tell me the number of the requisition.

Mr. SCHLESINGER.—That is No. 153.

Q. Did you ever enter into any combination, conspiracy or agreement with any of the officials in Washington, D. C., as to any of the matters covered by these requisitions?

A. I don't know any of the officials in Washington, never met them. [675—624]

(Whereupon said bill was introduced in evidence and marked Defendants' Exhibit A-40.)

Q. And did you prevent the consideration of these various requisitions and bids by the officials in Washington, D. C.?

A. I don't see how I could have anything whatever to do with Washington, D. C., in any possible way, shape or form. I have never been in Washington. I don't know any of the officials in Washington.

Q. I call your attention to a bill dated La Salle, Illinois, February 4, 1910, addressed to the Great Western Smelting & Refining Company, by Matheson & Heggler, where they charge on 8,131 pounds of zinc plates at \$7.40. Did you receive that bill in due course of business?

A. That invoice was received in the regular course of business.

(Whereupon said invoice was marked Defendants' Exhibit A-41 for identification.)

Mr. ALLEN.—I object to the introduction of this in evidence, on the ground it is incompetent, irrelevant and immaterial.

(Testimony of Emar Goldberg.)

By the COURT.—I think the objection should be sustained. It is two years afterwards. OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I will show you a letter, Navy Yard, Puget Sound, Washington, February 7, 1908, and signed J. H. Walsh, Assistant Naval Constructor, U. S. N. Did you receive that letter in due course of business?

A. Yes, sir, we received this letter in the regular course of business.

Q. And did you make reply thereto?

A. We replied to this letter. The other letter you showed me was [676—625] the answer to this, and this copy is an answer to the first letter.

Q. In other words—

A. They have gotten into the wrong place.

Mr. SCHLESINGER.—We will have this marked for identification and formally offer it in evidence.

Mr. ALLEN.—Our objection goes to the same point, incompetent, irrelevant and immaterial. There is no doubt but what they bid on all kinds of material there.

By the COURT.—I think they may go in.

(Whereupon said letter was introduced in evidence and marked Defendants' Exhibit A-42 and read to the jury.)

Q. Did you invite from Mr. Walsh the writing of any such communication? A. No, sir.

Q. Did you seek the advance information therein contained?

A. Not by writing any letter or asking for the information or in any other way. That letter orig-

(Testimony of Emar Goldberg.)

inated in the office of the man whose name is signed to it. I had no idea he was going to write to us at all.

Q. Were you in any conspiracy or combination with him to receive that information?

A. No, sir. It was public information. He might have written to a number of other people at the same time.

Q. I will call your attention to a letter dated October 5, 1907, addressed to the Great Western Smelting & Refining Company and signed W. A. Corder Company. Did you receive that letter in due course of business? [677—626]

A. Yes, sir, we received that letter in the regular course of business from the W. A. Corder Company.

(Whereupon said letter was marked Defendants' Exhibit A-43 for identification.)

Q. Do you recognize the signature as that of Mr. Corder?

A. That is the signature, yes, that is the signature of Mr. Corder.

Q. Does that letter speak the truth as it then existed?

A. That is the record of the sales of the Corder Company on the zinc owned by both companies for that month.

Q. Did you ever have any complaint about the quality of the zinc furnished by you?

A. No complaint as to quality for rolled zinc. We never received any complaint.

Q. I call your attention to an order for supplies

(Testimony of Emar Goldberg.)

dated December 3, 1907, and ask you whether or not you received that order in due course of business, and do you recognize the signature of Robert H. Orr appearing on the bottom of it?

A. This is the order that is covered afterwards by one of those public bills.

Mr. ALLEN.—That relates to one of the exhibits, requisition No. 153. No objection.

(Whereupon said order is admitted in evidence and marked Defendants' Exhibit A-44.)

Q. Did that statement which I have just read appear upon nearly all of these orders for supplies?

A. Yes, sir, that statement was on practically every order that we received for zinc. [678—627]

Q. In other words, you had to furnish zinc in accordance with the specifications given you by the Government?

A. The Government named certain specifications on articles, and it was necessary to live right up to the letter of those specifications or the material would be rejected.

Q. You mean by that the material would have been returned to you and not paid for by the Government? A. Yes, sir.

Q. Now, in the event of that happening, did you have any right to return that same material to the factory from whence you bought it?

A. When you once bought zinc from a zinc factory like Matheson & Heggler, you bought it and that was the end of it, so far as they were concerned.

Q. Can you tell these gentlemen why it is that

(Testimony of Emar Goldberg.)

the Matheson & Heggler Company declined to sell zinc plates to the Government, if you know?

Mr. ALLEN.—We object to that as being incompetent, irrelevant and immaterial.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I call your attention to what purports to be a notice bearing the caption “Important” and signed “Matheson & Heggler Zinc Company.” Did you ever before see that notice?

A. I have seen that notice pinned to the letters that I received from Matheson-Heggler Zinc Company.

Mr. SCHLESINGER.—I ask to have it marked for identification.

(Whereupon said notice was marked Defendants’ Exhibit A-45 for identification.)

Mr. ALLEN.—I object to this on the ground it is incompetent, [679—628] irrelevant and immaterial, and repetition of something that is already in evidence in the case. This little printed slip has already been offered in evidence, as I understand it.

Mr. SCHLESINGER.—I am going to follow it with another question.

By the COURT.—It is the same notice attached to the other order?

Mr. SHLESINGER.—Yes, your Honor, it is.

By the COURT.—Let it go. Proceed.

(Whereupon Defendants’ Exhibit A-45 for identification was admitted in evidence and read to the jury.)

(Testimony of Emar Goldberg.)

Q. Was that fact taken into consideration by the Great Western Smelting & Refining Company in fixing its prices in its dealings with the Government?

A. Why, it was undoubtedly taken into consideration by everyone who ever does any business with the Government.

Q. Did you ever attempt, or your concern, to prevent the purchase by the Government of zinc plates from any of the factories in the east?

A. There is no possible way of our preventing the United States Government from doing as it pleases.

Q. Did you ever enter into any agreement or combine with any of these factories to prevent the sale to the United States Government of zinc plates?

A. The first I heard of the—

Q. Answer yes or no. A. No, sir.

Q. I will call your attention to a paper entitled "Notice of rejected articles," in large print, and bearing date January 21, 1908. I will ask you whether or not you received that notice in due course of business. [680—629]

A. Yes, sir, that notice came to our office in the regular course of business.

(Whereupon said notice was marked Defendants' Exhibit A-46 for identification.)

Mr. ALLEN.—Does that refer to an exhibit offered?

Mr. SCHLESINGER.—Yes, I think it does. You will know by looking at it.

Mr. ALLEN.—No objection.

(Whereupon Defendants' Exhibit A-46 for identi-

(Testimony of Emar Goldberg.)

fication was admitted in evidence.)

Q. Did you have any agreement or combination with the General Storekeeper, or anybody else, that blanks of that character should be printed or distributed, as the case may require? A. No, sir.

Q. And do you know whether or not they had these blanks printed for the benefit of the Great Western Smelting & Refining Company?

A. We had nothing to do with the matter.

Q. I call your attention to the words, "in excess" appearing under the caption, "Cause of Rejection." What became of the quantity of zinc originally rejected?

A. The zinc on that particular rejection or in that particular proposal was afterwards accepted by the Government at 12½ cents a pound.

Q. Won't you kindly explain that a little more in detail.

A. Do you want me to explain how I happened to sell it over—

Q. Yes.

A. When we originally received that order, or the award, the pay [681—630] office called us up. There seemed to be no zinc in town and they were buying considerable zinc. I told Mr. Kettlewell over the phone that we had about six thousand pounds. He said, "Send it over," so we sent the six thousand pounds over. The award came in—I don't remember whether we received a proposal the day that we sent it out or not. I am under the impression I telephoned up to him for the number,

(Testimony of Emar Goldberg.)

and when the award came in it called for four thousand pounds, but as he had told me to send over all we had, which was six thousand, I paid no more attention to it until this notice of excess delivery and rejection reached us. When that notice of rejection reached our office, I phoned up to Mr. Kettlewell and I said, "Mr. Kettlewell, this excess two thousand pounds has been rejected. You told me to send six thousand." He said, "No, you must have misunderstood me. I told you that the award called for four thousand pounds." When he said that, I thought perhaps I had misunderstood him, although I was pretty positive I had not, and I didn't do any more about it, thinking that the Government would take it up later. That is how it happened that that zinc was left there at the yard and afterwards accepted. We afterwards put in a bid, and it was accepted by the Government in some way at 12½ cents. I don't recall exactly how long after that.

Q. I will call your attention to a paper entitled "Notice of Award," and signed by E. B. Rogers, Paymaster General, U. S. N., under date of April 24, 1908, and also to a copy, printed copy attached thereto. Did you receive those documents in due course of business?

A. Yes, those documents reached us in the regular course of business.

(Whereupon said papers were marked Defendants' Exhibit A-47 for identification.) [682—631]

Mr. SCHLESINGER.—I will offer in evidence these documents.

(Testimony of Emar Goldberg.)

Q. I show you a letter dated February 17, 1908, and signed by Mr. Ray Spear and addressed to the Great Western Smelting & Refining Company. Did you receive that in due course of business?

A. This was received in the regular course of business.

(Whereupon said letter was marked Defendants' Exhibit A-48 for identification.)

Mr. SCHLESINGER.—I might state the purpose of that, if your Honor please, is to show the general procedure—the purpose of that is to show the general course of business in that office. (Referring to A-47).

Mr. ALLEN.—With that explanation of counsel, I don't know that I object to it, if it is just for the purpose of showing the general procedure there.

(Whereupon Defendants' Exhibit A-47 for identification was admitted in evidence and read to the jury.)

Mr. ALLEN.—I want to ask one question to prove the authenticity of this. Mr. Spear, you were Paymaster at Bremerton on the date February 17, 1908, were you?

Mr. SPEAR.—Yes, sir.

Mr. ALLEN.—I want you to take a look at that instrument. Is that your signature?

Mr. SPEAR.—No, sir, on February 17, I was in the eastern part of the United States, not at the station at all.

Mr. ALLEN.—Did anyone in your office have any authority to sign your name at that time?

(Testimony of Emar Goldberg.)

Mr. SPEAR.—No, sir.

Mr. ALLEN.—Does that “M” mean anything to you? [683—632]

Mr. SPEAR.—It looks like Mr. Meyer, I would take it.

Mr. ALLEN.—With that explanation we will let it go before the jury.

Mr. MORRIS.—Who was in charge of the Storekeeper’s office at the date of this exhibit 47, when it was written?

Mr. SPEAR.—I am mistaken about the question. In 1908 I was on the station. I was thinking of 1907.

Mr. ALLEN.—There was no rubber stamp authorized in your office?

Mr. SPEAR.—Purely as a rubber stamp. It is no ink, no facsimile.

Mr. MORRIS.—I asked a question and I want it answered. Mr. Spear, directing your attention to Defendants’ Exhibit A-48, being a letter of February 17, 1908, I would like for you to state who, if anyone, was in charge of the Storekeeper’s office during the time you were absent?

Mr. SPEAR.—I amended my former statement to the effect, on that particular date I was present. I was mistaken as to the date at the time I made my first statement. I was in charge of that office on that date, so far as I recollect. I might have been over in Seattle on that particular date. I am not sure as to that.

Mr. MORRIS.—Were you at the Storekeeper’s

(Testimony of Emar Goldberg.)

office at Bremerton at the time this letter was written and signed, if you know?

Mr. SPEAR.—Officially I was in charge of that office.

Mr. MORRIS.—But physically you might have been in Seattle?

Mr. SPEAR.—Yes, sir.

Mr. ALLEN.—On this date there was no authorized rubber stamp simulating your signature, authorized or permitted in your office?

Mr. SPEAR.—I never allowed a facsimile stamp in the office.

Mr. ALLEN.—Isn't it, as a matter of fact, prohibited under the statute?

Mr. SPEAR.—As a matter of policy. [684—633]

Mr. ALLEN.—With that explanation, no objection.

(Whereupon Defendants' Exhibit A-47 was admitted in evidence and read to the jury.)

(By Mr. SCHLESINGER to Witness.)

Q. Did you make the redelivery referred to in that letter?

A. We either made the redelivery or were penalized, one of the two. I don't recall the transaction, but we must have either made the redelivery or been penalized.

Q. And was a portion of the requisition rejected, as the letter indicated?

A. Must have been rejected or we never would have received such a letter.

Q. Referring to that transaction, the Great West-

(Testimony of Emar Goldberg.)

ern Smelting & Refining Company was paid only for the articles that the Government ultimately accepted?

A. That is all anyone ever was paid for, was what the Government accepted. If you delivered an article over there, and they accepted half of it, you were paid for half. If they rejected the entire quantity, you wasn't paid anything on that particular shipment; you was simply paid for what the Government agreed to accept.

Q. You have been in court since the commencement of this trial, of course? A. Yes, sir.

Q. And you heard the testimony of Mr. Kettlewell? A. Yes, sir.

Q. I will call your attention to the testimony of Mr. Kettlewell, given upon page 9 of this transcript. He said, referring to you, "He made no reference to this particular transaction, but he called me out in the hall and handed me \$100." Did that— [685—634] A. That never occurred.

Q. Did you ever hand him \$100?

A. I never handed him \$100.

Q. In any hall or any place? A. No, sir.

Q. He further said that you said, "This will straighten up all these old matters—this will straighten up all these old matters, and there is a big requisition coming through; Meyer is going to make a big requisition as soon as he can, and he said, I want everything straightened up before that comes through." Did you have any such conversation with Mr. Kettlewell at that unnamed time and

(Testimony of Emar Goldberg.)

at that unnamed place?

A. I never had any such conversation as that with Mr. Kettlewell at any time. There was never any occasion for any such conversation as that, or any conversation that would be anything like that.

Q. Did you have any old matters with Mr. Kettlewell or Mr. Meyer prior to that time?

A. No, sir, there were no old matters or new matters or any other kind of matters for me to settle with Mr. Kettlewell.

Q. Do you know what he referred to in his testimony that you said, "This will straighten up all these old matters."

A. I don't know what he was talking about, because there never was any such conversation as that between Kettlewell and myself.

Q. Mr. Kettlewell further testified upon the same page: "Yes, he told me you told him that you would divide the profits on a basis of twenty per cent." Did you tell him that?

A. I never made any such remark as that to him or anybody else.

Q. And then he further testified, adding to it—if I may interpolate, he further testified, "On the basis of twenty per cent to Meyer and twenty per cent to him," twenty per cent to Meyer and twenty per cent to you. Did you tell him that you would give twenty per [686—635] cent of either gross or net profits to Mr. Meyer and twenty per cent to him, Kettlewell?

A. We never had any such conversation as that,

(Testimony of Emar Goldberg.)

in any way, shape or form.

Q. Did you ever render him a statement, showing what the gross or net profits of that branch concern was, for any length of time or for any transaction?

A. It was none of his affairs as what the profits were for any length of time, or any time or on any transaction.

Q. Did you ever inform him as to what your gross or net profits were? A. No, sir.

Q. Now, to fully cover it, did you agree with him at that time to give away forty per cent of the net or gross profits of the branch of the Great Western Smelting & Refining Company?

A. There never was any such kind of agreement or any other agreement with him.

Q. I will call your attention to the testimony given by Mr. Kettlewell in answer to a question by Mr. Riddell. "Q. Before this requisition came through, did Mr. Goldberg say anything to you about it" and the answer was, "I believe I said when he paid me that \$100 he told me this requisition would come through." You again testify that did not occur?

A. I never had any conversations of any character of that kind.

Q. Mr. Kettlewell testified upon page 18: "Well, when we got this requisition, I phoned Mr. Goldberg and told him it was there." Did you receive from Mr. Kettlewell at that unnamed time any such telephonic message?

A. Not in regard to any requisition. On the day

(Testimony of Emar Goldberg.)

that I received that proposal, someone telephoned to our office and told us that [687—636] a proposal was there for fifty thousand pounds of zinc. I don't know now whether it was Mr. Kettlewell or someone else in that office. I went up to the office and I got the proposal. That was not the requisition. I didn't know anything about that until the day I received it.

Q. Mr. Kettlewell further testified upon the same page: "The proposal to Corder & Company was mailed direct and several others. Some of them I took around to dealers myself and some I handed Mr. Goldberg." Did he hand you any proposals?

A. No, sir, outside of the one that I asked for, and I don't know now whether I received that proposal from him or from the clerk in the office.

Q. Did you ask him for an extra set of proposals?

A. No, sir, I never asked him for an extra set of proposals.

Q. Did he hand you the proposal of P. McManus, or show it to you? A. No, sir.

Q. I will ask you, did you ever before see the proposal of P. McManus.

A. I never saw it until I saw it in the courtroom here the other day.

Q. Mr. Kettlewell further testified, "I called particular attention to the fact that we had to have this right away, five days. They, of course, couldn't furnish it within that time." Did he make any such communication to you?

A. He made no communication to me. He just

(Testimony of Emar Goldberg.)

simply handed me the proposal, and I saw what was written on the proposal. It wasn't necessary for him to call my attention to that. The face of the proposal showed that. I would have known it without his calling my attention to it.

Q. How did Mr. Meyer generally address you in your official relations with him? [688—637]

A. Mr. Meyer has always addressed me as "Mr. Goldberg," not only in official relations, or if he was to meet me on the street, or any place else. He has never addressed me any other way than Mr. Goldberg.

Q. Did he ever call you "Jimmy"?

A. He never called me "Jimmy," or any other nickname. He isn't the kind of a man who would talk like that, anyhow.

Mr. ALLEN.—You are talking about Meyer now?

A. Yes.

Q. You have testified, I believe, that you called for that check on the morning of May 26th?

A. No, I testified that I called for the check right after lunch.

Q. At that time it was not given to you?

A. No, sir.

Q. You have been charged in this indictment with having entered into a conspiracy to defraud the Government out of money in this transaction, and to gain for yourself and others unconscionable profits. Did you enter into any such conspiracy or combine or have any such agreement?

A. I never had any such agreement.

(Testimony of Emar Goldberg.)

Q. Did you have any agreement or conspiracy to divide profits with any of these parties?

A. I never had any agreement or conspiracy or arrangement to divide any profits with anyone, in no way, with that office or any other office, excepting the profits that we were to divide with Mr. Corder. That was a business agreement that was made irrespective of the United States Government entirely. It was an agreement that was entered into long before we were ever doing any business with the United States Government, and it was continued when the Government started to buy zinc plates from us. [689—638]

Q. Was that agreement entered into with the sanction of the Great Western Smelting & Refining Company? A. Why, certainly it was.

Q. Did it appear upon your books?

A. It appeared upon our books. Every item appeared upon our books and was reported every day.

Q. After this indictment had been sent by you to the Great Western Smelting & Refining Company of San Francisco and returned to you, did you read it? A. Yes, sir.

Q. Are you guilty of any of the things stated in that indictment?

A. No, sir, I am not guilty of any of the things stated in that indictment, outside of the fact that we sold the zinc to the United States Government. We sold and delivered the zinc, there is no question about that part.

Q. Have you profited by any of the transactions

(Testimony of Emar Goldberg.)

referred to to the extent of a single five cent piece?

A. No, sir.

Q. Did you discuss with Mr. Kettlewell this proposition of five days delivery?

A. No, sir, that was never discussed with Mr. Kettlewell.

Q. You told me, putting this more in the form of an inquiry, you told me this morning you wanted to explain something about a \$336 check. It is not quite plain to me. I just want to have him give the explanation, if he will.

A. One of those checks that are in evidence here is a \$336 check. I don't know what the intention—what was done with that check, but that check was deposited to my account in the National Bank of Commerce.

Q. For what purpose was it so deposited?

A. My own use, but it was not drawn out in the shape of a \$350 [690—639] check, either.

Q. What evidence have you of that fact?

A. My account at the National Bank of Commerce.

Q. And he has been subpoenaed, the proper official?

A. He is prepared to come up here at any time.

Q. I will ask you just one additional question. It is the final one, your Honor. Had you anything on earth to do with the matter of Kettlewell's securing his responsible position with the Government?

A. Why, certinly not. How would it be possible for me to have anything to do with Mr. Kettlewell securing his position from the Government?

(Testimony of Emar Goldberg.)

Q. Did you suggest his employment? Did you know him?

A. He was employed by the Government before I ever knew him or met him.

Cross-examination by Mr. ALLEN.

Q. You stated in your direct examination that you are the manager of the Great Western Smelting & Refining Company; is that right?

A. No, I am technically known as the State Agent, but he is generally called "manager."

Q. State Agent of the Great Western Smelting & Refining Company, a corporation, is that right?

A. Yes, sir.

Q. I believe you stated in your direct examination that it was a corporation organized under the laws of Maine; is that right? A. That is true.

Q. Mr. Schlesinger stated that he thought it was a corporation organized under the laws of the State of Illinois. Is Mr. [619—640] Schlesinger right or are you right?

A. The Great Western Smelting & Refining Company has gone through various stages.

Q. Yes, I think so.

A. The present Great Western Smelting & Refining Company is organized under the laws of the State of Maine.

Q. Are you sure of that fact?

A. Yes, I am sure of the fact, that the Great Western Smelting & Refining Company to-day is organized under the laws of the State of Maine, although I will say I don't know but mighty little about the

(Testimony of Emar Goldberg.)

internal workings of the Great Western Smelting & Refining Company.

Q. I call your attention to—you can take a look at it and tell me what it is, if you will. Is that page before you known as the certificate of the Secretary of State of the State of Washington, of recent date—of last month, or last year, certifying to the authenticity of the documents included therein? By reference to the documents included therein, tell the jury under what State laws this corporation really was created in 1908. Calling his attention to the last page of it—I call your attention on the second from the last page of this certificate from our own Secretary of State. Does that state accurately the fact that this corporation is a corporation of the State of California, not of the State of Maine or Illinois?

Mr. MORRIS.—I object to the question. He doesn't know whether it states facts or not. That paper states for itself.

Q. That paper—all right, state the fact.

Mr. KERR.—This witness doesn't know that.

By the COURT.—I think the paper would be the best evidence.

Mr. KERR.—If it is material at all, this witness hasn't anything to do with it. It is a matter the attorneys handle, I handled here.

Q. State to the jury whether or not, having refreshed your [692—641] recollection, it is a corporation organized under the laws of the State of California.

A. It is not a corporation organized under the laws

(Testimony of Emar Goldberg.)

of the State of California to-day. It might have been at this time.

Q. It was then in 1908. That is the time we have been talking about during all this period of time?

A. But I wasn't asked that.

Q. You are willing to say now at that time it was a corporation organized under the laws of the State of California?

Mr. KERR.—If that is material, we re-incorporated this company, and I handled it for the Great Western Smelting & Refining Company, since that date.

Q. In other words, then, your original declaration that the corporation was a corporation in 1908 of the State of Maine, is probably not true, if you made that statement?

A. I never made that statement. I said that the Great Western Smelting & Refining Company is a corporation organized under the laws of the State of Maine.

Q. You are then referring to the present existence of the corporation? A. Yes, sir.

Q. Then, as you seem to know so much about the past history of the corporation, state to the jury in how many States this corporation has been organized from time to time, if you know? A. I don't know.

Mr. KERR.—This witness isn't pretending to know.

Q. In other words, although you are manager of this Great Western Smelting & Refining Company, now doing business here in this State, and has been

(Testimony of Emar Goldberg.)

doing business here since long prior to 1908, you can not now tell the jury under what States and by what authority they have done business in the city of Seattle, is that [693—642] right?

Mr. KERR.—We object to that on the ground it is a supposition. This witness hasn't testified he was general manager for the Great Western Smelting & Refining Company. He has testified he was acting in that capacity at this branch in the city of Seattle, and that is all he has testified to. He has already testified he was not on the Board of Trustees, he was not an officer, he had nothing to do with the corporate management of the affairs of this company.

By the COURT.—If he knows he can tell. OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. Answer the question.

A. What was the question?

Q. (Question read.)

A. I misunderstood your question in the first place. I thought you meant—intended to ask me in what States the Great Western Smelting & Refining Company had been doing business.

Q. No, sir; I am confining it now to the States under which, and the character of it as a corporation.

A. Well, I see. Well, the first State under which the Great Western Smelting & Refining Company was doing business in this city was California.

Q. When was that, what time, what year?

A. That was—

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—I object to that upon the ground it is not cross-examination and not the best evidence; that the fact itself may be shown by certified copies of the Articles.

By the COURT.—If he knows, he may answer.
OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. When was that, what time, what year? [694—643]

A. I don't remember the year in which the firm was incorporated, because at first it was a special partnership on this coast.

Q. When was it a special partnership, then?

A. In 1898.

Q. When did it assume a corporate form?

A. I don't remember.

Q. You don't know under what State, then, it has incorporated, do you?

A. I am fairly certain it was incorporated under the laws of the State of California.

Q. In the first instance, then, it was incorporated under the laws of the State of California; is that true?

A. I am under the impression, but I had nothing to do with the corporate workings of the Company. That was entirely outside of my province. If they wanted me to do anything of that kind, or had any instructions for me, they mailed it to me.

Q. I want you to tell us who the officers of the corporation were the first time you had anything to do with it. Tell the year and who they were.

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—It isn't fair to this witness to ask him when particular concerns were incorporated. You can easily get the fact by procuring certified copies of the Articles themselves. They are the best evidence.

By the COURT.—The Court has already ruled upon that. He may answer if he knows. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I don't recall the year. The first President on this coast must have been Mr. Alper.

Q. He is the mysterious Mr. Alper to whose numerous conversations you have testified about in the year 1908?

Mr. SCHLESINGER.—I object to that question and criticize your remark as misconduct unbecoming the prosecutor. I move the [695—644] question be withdrawn and the jury instructed to disregard it.

By the COURT.—The word "mysterious" will be withdrawn and the jury are instructed to disregard it.

Q. He is the Mr. Alper to whose numerous conversations you have testified about in the year 1908?

A. He is the Mr. Alper.

Q. Has he been connected with the firm from 1908 down continuously to the present time?

A. Yes, sir.

Q. Is he now in the State of California?

Mr. SCHLESINGER.—How in the world can he know, in Seattle, where Mr. Alper is to-day?

By the COURT.—Let him answer if he knows.

(Testimony of Emar Goldberg.)

A. I don't know.

Q. Where was Mr. Alper the last time you heard of his whereabouts?

Mr. SCHLESINGER.—I object as calling for the opinion of the witness and not being competent cross-examination, and not binding upon him.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. He was in San Francisco.

Q. When was that, when did you last hear from Mr. Alper directly or indirectly?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, not referring to any matter drawn out in the direct examination.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. Oh, it isn't more than a week or two weeks since I heard from Mr. Alper.

Q. You heard from Mr. Alper a week or two weeks ago and he was then in the city of San Francisco and in the State of California?

A. Yes, sir. [696—645]

Q. What changes, then, were made in recent years and under what laws, the laws of what State, is the corporation now incorporated, going back to the present time?

Mr. SCHLESINGER.—That refers to what you actually know, and not to what you think.

A. I have never kept exact track. It was just about this time in 1908 that some change occurred and I am under the impression it was just about that

(Testimony of Emar Goldberg.)

time that Mr. Alper became vice-president of the whole company.

Q. Haven't changes been quite frequent in the history of the Great Western Smelting & Refining Company?

A. It depends altogether on what you mean by frequent.

Q. Now, you testified yesterday on your direct examination that Mr. Kettlewell, who was clerk in the Navy Pay Office of the city of Seattle, began importuning you for money in the month of December, 1907; is that right?

A. Yes, sir, that is right.

Q. I believe you stated in the month of December, 1907, that Mr. Kettlewell wanted to borrow, I believe, \$1,000 from you at that time; is that true?

A. That is true.

Q. I believe you gave as a reason for not loaning to Mr. Kettlewell this \$1,000, or at least assigned that as a reason, that you were going in the lumber business, or shingle business; is that true?

A. No, sir; I didn't say that. [697—646]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants Edwin F. Meyer and Emar Goldberg. Vol. 4, Pages 453 to 646. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [698]

(Testimony of Emar Goldberg.)

E. GOLDBERG, on the stand.

Cross-examination (Resumed).

(By Mr. ALLEN.)

Q. Did you say then, Mr. Goldberg, that you were in the lumber business, and that was the reason, or words to that effect? A. Yes, sir.

Q. You told him, then, you could not loan him the money, because you had your money tied up in the lumber business; is that right?

A. Yes, sir, or words to that effect.

Q. About when was that, in the month of December, 1907?

A. I don't recall exactly when that was; it was somewhere around toward the middle of the month, I am under the impression.

Q. Calling your attention to requisition No. 153,—this is part of Plaintiff's Exhibit No. 78, calling your attention to this, Mr. Goldberg, I will ask you to take a look at the proposals submitted there. Did your concern put in a proposal at that time?

A. This seems to be a proposal of the Great Western Smelting & Refining Company.

Q. That is your proposal, is it not, and your company?

A. Yes, that is the Great Western Smelting & Refining Company.

Q. In which you agreed to furnish how many pounds of zinc, three thousand pounds of zinc at 16c a pound; isn't that true? A. Yes, sir.

Q. Mr. Corder, in that same matter, had a proposal in which he offered to furnish it at 16c; is that

(Testimony of Emar Goldberg.)

true? A. Yes, sir.

Q. And the Pacific Engineering Company had a proposal in which they [699—647] offered to furnish it at 9.75 a hundred; is that right?

A. In thirty days.

Q. In thirty days? A. Yes, sir.

Q. Now, to whom was the award made in that particular transaction?

A. The award was made to the Great Western Smelting & Refining Company.

Q. At what figure? A. At 16c a pound.

Q. At 16c a pound? A. Yes.

Q. Then this conversation about the thousand dollars, how does that compare in point of time with this award?

A. I didn't notice the time of that award, Mr. Allen.

Q. Beg pardon?

A. I didn't notice the time of that award.

Q. The time of this award, if I get it properly (you can look at it), is December 2d. There is the date, December 2, 1907.

A. It was sometime later than that.

Q. It was a little bit later than that, but about the same time? A. No, sir, not about the same time.

Q. Well, within a week, then, or so?

A. I am under the impression it was in the latter part of December.

Q. You think not it was the latter part of December, and not in the early part of December?

A. Yes.

(Testimony of Emar Goldberg.)

Q. It was not the early part of December, then, that he wanted to borrow the thousand dollars?

A. I am under the impression it was in the latter part of December. [700—648]

Q. Was that the first conversation he had ever had with you about borrowing money? Was that in the month of December, 1907? A. Yes, sir.

Q. I will call your attention to the requisition numbered 127 for pig iron, which was awarded to your concern in November—

Mr. ALLEN.—Well, did you have any conversation with your friend, Mr. Kettlewell, in the month of January, with reference to making him a loan?

Mr. ALLEN.—Did you have any conversation with Mr. Kettlewell, the Chief Clerk in the Navy Pay Office, in the city of Seattle, in the month of January, with reference to loaning him money?

A. Yes, sir, I had some conversations.

Q. About what time was that, do you recall?

A. That was in the latter part of January.

Q. In the latter part of January, 1908? Calling your attention to Plaintiff's Exhibit, requisition No. 207—

Mr. MORRIS.—Is that exhibit numbered?

Mr. ALLEN.—I forget the exhibit number. It is requisition No. 207 and been offered in evidence.

Mr. MORRIS.—I wanted to get the exhibit number.

Mr. ALLEN.—I will in just a second. (Handing papers to counsel for defendants.)

Q. You were a bidder before the United States

(Testimony of Emar Goldberg.)

Navy Yard authorities for material in the month of January, were you not?

Mr. SCHLESINGER.—What year?

Mr. ALLEN.—1908.

A. If the records show that—

Q. Well, I am asking you about whether that is a fact or not.

A. Well, I don't remember exactly. I could tell by referring to our books, or referring to the records, whether we did. Probably [701—649] we did.

Mr. ALLEN.—Probably you did, then, bid in January, 1908, and at that time there was some more conversation about your loaning some money to Kettlewell, is that true? A. Yes, sir.

Q. Calling your attention to a part of Plaintiff's Exhibit No. 18, which purports to be the typewritten copy of a letter, I will ask you whether or not you ever saw the letter of which this is a copy.

Mr. ALLEN.—Yes, certainly. What is your answer to that?

A. I never saw that letter until I heard it the other day. I say, the first time I saw that letter was in court.

Q. You never heard of the original, you never heard any mention made of it? A. No, sir.

Q. Calling your attention to requisition No. 193, which is Plaintiff's Exhibit 18, from which I have just taken that memorandum they have, I will ask you to state to the jury, whether or not, under this requisition, which calls for four thousand pounds,

(Testimony of Emar Goldberg.)

tell the jury what you shipped in compliance with the requirements of the four thousand pound requisitions. That is number 18.

A. There is no way of my telling from this memorandum how much we delivered.

Q. Do you remember how much you delivered?

A. No, sir.

Q. If the record shows that on this requisition for four thousand pounds, you, in fact, delivered 5,933 pounds, there was an excess delivery, then, at that time of 1,933 pounds, was there not? A. Yes, sir.

Q. Calling your attention to part of Plaintiff's Exhibit—a bill [702—650] of the Great Western Smelting & Refining Company, dated December 13, 1907, for the delivery of 5,933 pounds. That is from your company, wasn't it? A. Yes, sir.

Q. And that excess delivery was still pending in the month of January, was it not?

A. That is the requisition, the proposal regarding which we were talking this morning. I didn't recognize it from the Government folder. I have never seen those folders before.

Q. Well, I was showing you the folder.

A. I knew nothing about these folders.

Q. Well, then, answer this question. There was pending then in January, the question as to whether the Government should accept and receive 1,933 pounds of an excess delivery, where you had been directed to deliver four thousand pounds, and you had actually delivered 5,933 pounds, is that not true?

(Testimony of Emar Goldberg.)

A. Sometime after—

Q. (Interrupting.) Answer and then explain, Mr. Goldberg.

A. Yes, that was pending, but we received a letter sometime in January, telling us that the 1,933 pounds had been rejected. That was the 1,933 pounds that was afterwards accepted at 12 or 12½c a pound.

Mr. ALLEN.—So there was pending before the United States authorities, including Mr. Kettlewell's office, along in the early part of January, at least, the question of whether or not they would accept and receive an excessive delivery of nearly fifty per cent; isn't that true?

A. I don't know what it had to do with Mr. Kettlewell's office.

Q. Well, as a matter of fact, you do know those matters came through Mr. Kettlewell's office, and the check was issued through Mr. [703—651] Kettlewell's office?

A. I know the check was issued from Mr. Kettlewell's office.

Q. And you knew, if the matter was not accepted, that the matter was still pending in the hands of the Government authorities, was it not, at that time?

A. Yes, sir.

Q. You knew Mr. Kettlewell was the Chief Clerk over here in this office, and to him you would go and ask for information, and he would give you the proposals, and all that sort of thing; isn't that true?

A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. So, at the time when you were discussing with Mr. Kettlewell the proposition of loaning him money, there was then pending before the United States authorities, including Mr. Kettlewell's office, the question of the acceptance or rejection of 1,933 pounds, an excess delivery, approximately fifty per cent; isn't that true? A. Yes, sir.

Q. What discussion did you have in the month of February, 1908, with Mr. Kettlewell, with reference to loaning him money?

A. Early in February, 1908, when Mr. Kettlewell—it was when Mr. Kettlewell first borrowed some money from me, borrowed \$75 from me, early in February.

Q. Early in February? A. Yes, sir.

Q. As a matter of fact, was that borrowed now, in the month of January, refreshing your recollection, the latter part of January?

A. No. I am fairly certain that was borrowed in the month of February.

Q. What would you say as to the fact that the books of the Great Western Smelting & Refining Company, if they showed that there was [704—652] an expenditure of \$100 along about the 10th or 11th of January, 1908, for which there is no adequate accounting in the books, cash withdrawal, and another in the latter part of January of the same year, would you say that part, or any of that money, was the money which was paid to Mr. Kettlewell?

Mr. SCHLESINGER.—One moment. I object to that as not being proper cross-examination assum-

(Testimony of Emar Goldberg.)

ing a state of facts not in evidence, argumentative and hypothetical.

The COURT.—I think he may answer.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Read the question.

(Question read.)

Mr. SCHLESINGER.—Now, it must be quite plain, if your Honor please, that that payment could not represent forty per cent, or indeed, twenty per cent of the transaction referred to. It obviously could have no reference under any theory of the case.

The COURT.—The Court ruled on the matter.

Mr. SCHLESINGER.—Exception.

A. That had nothing to do—I don't know the transaction to which you refer, nor the item to which you refer, but there was no possible way of its having anything to do with Mr. Kettlewell, because it was not the Great Western Smelting & Refining Company's money that I loaned to Mr. Kettlewell.

Mr. ALLEN.—That money could not have come from the books of the Great Western Smelting & Refining Company?

A. Oh, yes, the money came from the books of the Great Western Smelting & Refining Company, because all of the money I was getting, or most of it, I got from the Great Western Smelting & Refining Company, but it came from my own personal account.

Q. I see. Well, calling your attention to check No. 4502, in a number [705—653] of the Great Western Smelting & Refining Company, and you

(Testimony of Emar Goldberg.)

find there, Mr. Goldberg, this check signed by yourself, as manager of the company, payable to cash; that was a \$100 cash item; and there is another later in the month of \$75, payable to cash?

A. Where is the other one?

Mr. ALLEN.—Mr. House, can you tell me the date of those checks?

Mr. KERR.—What is the date of that?

Mr. ALLEN.—January 10, 1908.

A. This one (indicating).

Q. Check No. 4538?

A. Could I see the cash-book?

Q. Certainly.

Mr. KERR.—Do you want the cash-book of the company here?

The WITNESS.—Yes.

Mr. ALLEN.—We have never had it.

Mr. HOUSE.—We never had the cash-book prior to April 1st, 1908.

A. I can explain this item without the cash-book; but I wanted the cash-book to show what it was.

A. That check is endorsed—

Q. That one is? By whom?

A. That check is endorsed by a man who was travelling for the company, made out to a travelling man.

Q. Made payable to cash?

A. Yes, sir; and the travelling men cashed it, as the signatures on the back will show.

Q. Could you give us—

A. That check is endorsed by a man named Block;

(Testimony of Emar Goldberg.)

that man was travelling for the company. He might have asked for the check to be made to cash, because it was a \$100, and he might not have wanted to have a check made out in his own name, it might have [706—654] been a little hard or different for him to get it cashed. You might go through our books and find thousands of our checks like that, made out to certain men, and made out to cash, as a matter of convenience.

Q. Mr. Goldberg, can you provide for us checks upon your personal account, beginning along in December, 1907? We have never seen these, you understand? A. How is that?

Q. Can you get us the checks on your personal account, Emar Goldberg, from your own personal account, beginning 1907, and continuing down through the year 1908?

A. My personal checks returned from the bank?

Q. Yes.

A. I cannot very well give those to you, because when I burned up the lumber company's affairs, I burned up a lot of other stuff, and those checks were along with them.

Q. And these two or three you have in evidence were not burned up, were they?

A. Those two or three are not my personal checks.

Q. There are several here which are your personal checks, Mr. Goldberg? A. I haven't seen one.

Mr. ALLEN.—I mean, from your personal account?

(Testimony of Emar Goldberg.)

A. No, sir; I haven't seen a check here from my personal account.

Q. They are brought to your personal account from the Great Western Smelting & Refining Company. We haven't any of your personal checks?

A. No, the checks you have shown me are Great Western Smelting & Refining Company's checks. But you will find everything has been burned up. That belongs to the Great Western. I had no [707—655] right to burn or destroy, or do anything with any property that was the property of the Great Western; but my own personal property, my own checks, that were of no value, I burned those up.

Mr. ALLEN.—In other words, all of the checks, then, of your personal account, which began in 1907, in December, down through 1908, have been destroyed? A. Yes, and further along than that.

Q. I see; when were they destroyed?

A. At the time that I destroyed the lumber company's affairs.

Q. Now, that isn't very definite. In point of time, when was that?

A. That was after I sold the lumber company's, and just about the time I paid up its debt.

Q. When was that in point of time? Fix the date of it.

A. Well, now, Mr. Allen, I could get that information for you, but I would have to be talking absolutely from memory, and I don't recall exactly.

Q. Approximately. You know when these indictments were returned?

(Testimony of Emar Goldberg.)

A. I think it was about six months or a year before those indictments were returned.

Mr. ALLEN.—How many conversations did you have in the month of February with Mr. Kettlewell in regard to loaning him money?

A. I had, during the month of February, at least three conversations, and probably more, because I loaned him money three different times during the month of February.

Q. You loaned him \$75, I understood you to say, in the latter part of January, 1908?

A. I am not sure whether it was the latter part of January, or in February. I am more inclined to believe it was the early part of February.

Q. Very well, then. Then you had, you say, about three conversations [708—656] with him after that time, with regard to loaning him money; is that true?

A. I say, that I had three conversations with him at least, because I loaned him \$75 three different times. I might have had other conversations with him, but you are asking me, five years later, to recall conversations. Well, it is very hard for me to recall five years later every conversation I had with the man, but I can recall three, because I must have had three, having loaned him money three different times.

Q. Do I understand you to state you had three conversations in February, or did I misunderstand?

A. I say this: That I loaned him money three different times. It might be—the first was either late in January or early in February. I loaned him two

(Testimony of Emar Goldberg.)

other sums of \$75 each, during the month of February, or possibly the very early part of March, very early in March. It was directly after this that I went to see Mr. Kerr, when he wanted some more money from me.

Q. Then you loaned him money in the month of February, you think possibly \$75 more?

A. Now, I tried to explain three or four times, Mr. Allen.

Q. Well, it is not very clear to me. You loaned him \$75 about the first of February? A. Yes, sir.

Q. When did you loan him the next \$75?

A. Probably about a week or ten days later.

Q. A week or ten days later he borrowed \$75 more?

A. Yes.

Q. Where did this conversation take place that resulted in the loan of this \$75?

A. In the hall of the Walker Building. [709—657]

Q. In the hall of the Walker Building?

A. Yes.

Q. It was not in the office of the paymaster there; it was out in the hall, is that right? A. Yes, sir.

Q. Where did the conversation with reference to the third loan take place?

A. I am not sure whether he started the conversation in the office or not; he generally, when he wanted to talk about money to me, he would call me out into the hall.

Q. You say generally that he would do this. As a matter of fact, you had enough conversations with

(Testimony of Emar Goldberg.)

Mr. Kettlewell that there was sort of a habit established of talking out in the hall to talk about it, was that right? A. Well, the habit was on his part.

Q. But you were with him at the time, is that right?

A. If he would start the conversation,—he might have started the conversation in the office, and that he would say, “I want to see you out in the hall,” and he would talk to me out in the hall, and tell me how hard up he was, and how much he needed this money, and how I ought to let him have it, and one thing and another like that, as a man who is pressing you for money would talk to you.

Mr. ALLEN.—In what form did you let him have this money? Did you give it to him by check, by cash, or in what form?

A. I don’t remember how I let him have it.

Q. You don’t remember? A. No, I don’t.

Q. Do you remember how you let him have the first sum of \$75?

A. I don’t remember. I am under the impression one of the amounts I let him have, I almost distinctly remember, a cash check for \$75. [710—658]

Q. That was cash paid to him; but how about the other amount?

A. I didn’t say positively, Mr. Allen.

Q. I am asking for your best recollection.

A. I don’t recall. I know I let him have three amounts, and I know that one amount was in gold, but whether the other two amounts were by cash or check, I don’t recall.

(Testimony of Emar Goldberg.)

Q. I see. Well, which one of these payments, then, was in gold? A. I don't recall that.

Q. You don't know whether that was the first, second or third payment? A. No, sir.

Q. But you think that all of these payments or loans were made prior to the month of March, 1908, is that right?

A. I tried very hard, Mr. Allen, to explain that this is five and a half years ago, and I cannot place an exact date, but it was between the latter part of January and the early part of March.

Q. I see.

A. The reason that I recall that is this, that after the last loan he came to me again, or called me up there again, and wanted to borrow some more money. I thought that I had loaned him as much money as I could afford to loan him, and it looked like it was going to become too much of a habit with him, and I went up to Mr. Kerr—

Q. Well, never mind that.

A. I haven't explained this, and that is why I want to explain. The only reason I am able to place the date here is that when I went up to Mr. Kerr to ask his advice on the subject, at the end of the conversation I told Mr. Kerr Mr. Alper was going to be up here shortly, and I know Mr. Alper came up just about the first of April.

Q. About the first of April? A. Yes.

Q. Now, we have something definite. To what other person or persons [711—659] did you loan money in the month of December, 1907, or the months

(Testimony of Emar Goldberg.)

of January, February and March, 1908?

A. Why, I don't remember exactly what person. I did loan some money to Mr. Corder, but I don't remember exactly the months in which I loaned him the money.

Q. Outside of Mr. Corder to whom did you make any cash loans in that time?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. Why, I might have loaned a small amount of money to a friend of mine if he had called upon me, but I don't remember now.

Mr. ALLEN.—I am asking you as to persons to whom you did loan.

A. It is an absolute impossibility to remember that, because if a friend of mine, that was a good friend of mine, came to me and wanted \$150.00, \$200.00, and I thought he actually needed it, I would go in debt to help him, so there is no reason why I should remember this period of six or seven years later, what particular friend, or to what particular man I happened to loan some money.

Q. Then, Mr. Goldberg, you did regard Mr. Kettlewell as a friend of yours at that time, did you not?

A. No more of a friend than any other man with whom the firm was doing business.

Q. But at this time you are unable to tell us a single individual, outside of Mr. Corder, to whom you

(Testimony of Emar Goldberg.)

loaned or let have any money during this period of time; is that right?

A. Give me a few minutes to think.

Mr. SCHLESINGER.—I object on the ground it has been asked and answered. [712—660]

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. I am not in the money loaning business, you understand that. If I did loan a friend of mine money I wouldn't make a record of the fact I happened to loan a friend of mine some money. If I ever did loan a friend of mine some money I never asked him to pay any interest on it, therefore it wouldn't be likely I would try to impress upon my memory to whom I have loaned money. If you want a list of people to whom I loaned money I can give you plenty enough.

Mr. ALLEN.—You at least regarded Kettlewell a good enough friend to at least loan him \$75.00 in gold without taking his check, note or any other evidence of that debt; isn't that true?

A. No, sir. I can't answer that. You inferentially ask two or three questions there. I loaned him \$75.00 without any note, or other evidence of security, that is true, but I didn't loan it to him on the basis of being such a good friend of mine that he was entitled to it on account of friendship.

Q. What was the basis?

A. The man had been worrying the life out of me for money. The first time he came to me thinking I was a millionaire, or something of the kind, and he

(Testimony of Emar Goldberg.)

could borrow a thousand dollars from me. When he saw he could not borrow a thousand dollars from me he asked for small amounts. When he asked me for \$75.00 the firm was doing business with the navy yard. The way I looked at it was, that here he was importuning me for money, bothering me for money, telling me that his family was hard up. I knew the man. He had what was apparently a responsible, high Government position. If a man like that asked me for \$75, or asked anybody else for \$75, the chances are that he would give it to him and loan it to him, and wouldn't think of asking him for a note, or other evidence of [713—661] security, because, as a matter of fact, if a man didn't return the money, \$75, without a note, he wouldn't return it with a note.

Q. You didn't think there was anything curious about his calling you out in the hall and talking to you out in the hall about the money?

A. If a man generally wants to borrow money from you he don't generally shout it so anybody can hear it. Whenever he wants to borrow money he is rather quiet about it. I know I have gone to the bank, and I didn't want everybody in the bank to know I was borrowing money.

Q. That is especially true when a man is in business and he has pending before him particular contracts?

A. I never had any other pending before me and I am not an authority on that particular subject.

Q. How many times, after the 1st of April, did Mr. Kettlewell ever importune you for money?

(Testimony of Emar Goldberg.)

A. After the 1st of April I had already had a talk with Mr. Alper.

Q. Yes, sir, you referred to that. I am asking you how many times, now.

A. He didn't call on me for money as often after the 1st of April as he did before, for the very good reason I tried to keep out of his way as much as possible after the 1st of April. I didn't go up to the navy pay office any oftener than I was compelled to go up there.

Q. Well, you still haven't answered the question. How many times did he call upon you for money after the 1st of April, 1908?

A. He called on me just a few times for money after that, and the last time he called on me for money was when he came up to my house out on Capitol Hill.

Q. Well, when was that; what was the date of this call on Capitol [714—662] Hill?

A. That was over a year later.

Q. That is over a year after April, 1908?

A. Yes. In the meantime I had been trying to get this money back, because he promised me when he borrowed the first \$75.00 that he would let me have it in a short time.

Q. You sat in the courtroom and heard the testimony of Mr. Silverstone, did you not?

A. Yes, sir.

Q. Mr. Silverstone is a friend of yours, is he not?

A. Yes, sir.

Q. You heard the statement of Mr. Silverstone

(Testimony of Emar Goldberg.)

made here about four days ago in this courtroom to the effect that he told you—that you told him that Kettlewell was a friend of yours? Did you or did you not use that expression?

A. I did not use that expression. Mr. Silverstone is a very fine gentleman, but he is mistaken about that.

Q. He is mistaken about that? A. Yes, sir.

Q. So, as a matter of fact, Kettlewell wasn't a friend of yours?

A. No more friend than any other man with whom you are doing business.

Q. Any other man with whom—

A. The same way as a man with whom you are doing business. I have some very good friends I have made on account of business, but I know a good many other men with whom I do business I know in a sort of friendly way, but you wouldn't call them friends from a social standpoint, and probably wouldn't call them very strong friends from a business standpoint.

Q. Do you know any of the names of any other of your business [715—663] friends to whom you loaned money without a check, or receipt of any kind, during the year 1908?

Mr. SCHLESINGER.—I object to that upon the ground it is a constant repetition. He has been asked and answered that several times.

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. Without a check or without a note?

(Testimony of Emar Goldberg.)

Q. Yes.

Mr. SHIPLEY.—What do you mean, without a check?

Mr. SCHLESINGER.—Do you mean without either?

Mr. ALLEN.—Without either.

A. I am in the same position I was before. I might have loaned money to a friend of mine, but I don't recall.

Q. You can't recall it at this time?

A. I know one friend, I would rather much not give his name, to whom I loaned money, without a note.

Q. During the year 1908?

A. No, before the year 1908.

Q. Before the year 1908, but you can't think of anybody at this time in the year 1908.

A. I can't at the present moment. As I said before, I never kept a record, never kept any record of my personal affairs, never kept a set of books for myself. I did keep a sort of set of books for Mr. Alper and myself, but I was rather negligent about our personal affairs, and I never took the same care of them as I would the affairs of the Great Western Smelting & Refining Company.

Q. The first communication, now, you had with Mr. Alper, this official of one of the Great Western Smelting & Refining Company corporations, occurred about—with reference to this particular [716—664] carload of zinc, occurred about the 1st of April, 1908, is that right? A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. Mr. Alper came to the city of Seattle at that time, did he?

A. Mr. Alper was in the city of Seattle about that time.

Q. From what point did he come to Seattle, do you recall?

A. No, I don't. I would like to explain that, Mr. Allen.

Q. Yes.

A. Mr. Alper has come to the city of Seattle from San Francisco, and he has come from Chicago. He has been here a number of times. And for me to say under oath right now that he came from San Francisco, or from Chicago, at that particular time would be impossible, because I am a little confused as to whether he did come from Chicago or San Francisco at that particular time.

Q. In other words, he dropped into the city of Seattle about the 1st of April, 1908, is that right?

A. He came to Seattle around that time.

Q. Where did Mr. Alper stop while he was in the city on this occasion?

A. I don't know. Mr. Alper has stopped at the Washington, he stopped at the Seattle, and he has stopped at our home. Now, if Mrs. Alper was with him that time he might have been at our home, and he might have been at the Washington. If Mrs. Alper was not with him he might have stopped at the Seattle, and he might have been at our home anyhow.

(Testimony of Emar Goldberg.)

Q. Well, that is the year 1908. You had a lot of so-called important conferences with this Mr. Alper to which you have testified very definitely and clearly? A. Yes, sir.

Q. Now, give the jury your best impression as to where Mr. Alper [717—665] stopped during his stay in the city during that time.

A. Mr. Allen, I have tried very carefully to tell you that I couldn't tell exactly where Mr. Alper stopped. Mr. Alper has been here with Mrs. Alper and without Mrs. Alper; he has been here with the President of the concern, Mr. Bloom, from Chicago; he has been here without him; he has stopped at our house and stopped at the hotel. Now, this was five years ago, five years and a half ago. He has been here many times. For me to tell exactly where he stopped would be next to impossible. I might—

Mr. SCHLESINGER.—Well, you have answered the question, Mr. Goldberg.

A. I don't recall.

Mr. ALLEN.—You do recall with considerable clearness every one of these conversations with this Mr. Alper which would seem to throw the responsibility for the acts of your company upon him rather than upon yourself, but you are unable at this time to tell about where the president of your concern stopped while he was in this city; is that true?

Mr. KERR.—I object to that as argumentative, your Honor.

The COURT.—Let him answer.

Mr. KERR.—Exception.

(Testimony of Emar Goldberg.)

The COURT.—Note an exception.

A. Why, it was a very simple matter for me to remember conversations Mr. Alper had with me on business, particularly a matter of this kind, where I might not recall where he stopped. I wasn't particularly interested in whether he would stop at the Washington or the Seattle. I tried to get him to stop at my house, though, as often as he would possibly stay there.

Q. But you are not able at this time to give the Government—

Mr. KERR.—He has already answered three times. [718—666]

Mr. ALLEN.—You are not able at this time to give the Government any information which will assist us in throwing any light upon the visits of this Mr. Alper?

Mr. SCHLESINGER.—Your Honor please, we object to that. He has given them every bit of information he has here. It is not proper cross-examination. They have all our books and documents, and everything else.

The COURT.—He may answer as far as he can remember.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Very well.

Q. How many times did you see Mr. Alper during his stay in the city?

A. Well, I saw Mr. Alper a great deal of the time while he was in the city.

Q. At what places did you see him?

(Testimony of Emar Goldberg.)

A. I saw him at the office of the firm, and saw him at my house; I saw him more or less at various times; in fact, I was with Mr. Alper most of the time when he was in town.

Q. How long was he here, as a matter of fact?

A. Well, I don't recall. He very likely didn't stay here over two or three days. I doubt whether he ever stayed here over three days, possibly four days.

Q. I believe you stated on your direct examination, Mr. Alper, when he was here, told you to put in a bid in the case of zinc required at the navy yard, to put in a bid of 121½ cents a pound; is that right?

A. That is true.

Q. He said 121½ cents a pound, did he?

A. Yes, sir.

Q. Your memory is clear about that?

A. Approximately 121½ cents. When Mr. Alper would say to me [719—667] to put in a bid at 121½ cents he naturally gave me some discretion, that it might be a trifle one way or the other.

Q. In answer to a question propounded by your own counsel you answered distinctly and clearly he told you to put in a bid of 121½ cents a pound?

A. I did.

Q. You did prepare and file with the navy yard officials, with the Navy Pay Office in this city, a proposal, did you not, in the name of the Fowler Metal Company? A. Yes, sir.

Q. Is that made out in your own handwriting? The signature on it your own, is it?

(Testimony of Emar Goldberg.)

A. I don't recall, Mr. Allen.

Q. Well, we will take a look at it, Mr. Goldberg (handing papers to witness). Calling your attention to Plaintiff's Exhibit No. 7, calling your attention more particularly to that bid, the second proposal in the list, calling your attention to what purports to be the bill of the Great Western Smelting & Refining Company. A. That is my handwriting.

Q. That is your handwriting? A. Yes, sir.

Q. These figures extended out on the right, the sum of \$6,250.00, 12½¢ and 6250, those are your figures in your handwriting; is that right?

A. Yes, sir, those are my figures.

Q. This is your signature down here, isn't it (showing)? A. Yes, sir, that is my signature.

Q. Then you had obeyed instructions, the instructions of this Mr. Alper, and had put in a bid at 12½ cents, had you not? A. Yes, sir. [720—668]

Q. Thereafter you went to Mr. Silverstone, and saw Mr. Silverstone, and requested him to put in a further and an additional bid; isn't that true?

A. Yes, sir.

Q. Calling your attention to this (handing paper to witness), do you recall that as being the instrument which you took to Mr. Silverstone?

A. I guess that is the—

Q. Take a look at it.

A. You asked me if I took this to Mr. Silverstone. I don't recall very distinctly whether I took this or whether he went up and got it. I am very strongly under the impression that he went up to the office

(Testimony of Emar Goldberg.)

and asked for a copy of the proposals.

Q. If Mr. Silverstone testified that you brought that instrument to him, I believe at his hotel in this city, and asked him to sign that, and he did sign it at your request, would you think that Mr. Silverstone was probably right in regard to the matter?

Mr. SCHLESINGER.—I object to that as being argumentative and calling for an opinion of the witness. It is clearly improper, if your Honor please.

The COURT.—He may answer.

Mr. SCHLESINGER.—And Kettlewell—

The COURT.—Note an exception.

Mr. SCHLESINGER.—And Kettlewell testified that he gave it to Mr. Silverstone in his own office.

Mr. ALLEN.—I object to that, your Honor. That is suggesting to the witness.

The COURT.—Proceed. Note an exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.) [721—669]

A. Might be mistaken.

Mr. SCHLESINGER.—His opinion doesn't throw any light upon the subject.

The COURT.—The Court has ruled upon the matter. I think it is a matter of cross-examination.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

Mr. ALLEN.—Do you understand the question, Mr. Goldberg?

A. Yes. Mr. Silverstone was undoubtedly mistaken about that.

Q. You think Mr. Silverstone is mistaken?

(Testimony of Emar Goldberg.)

A. Yes.

Q. Did Silverstone ever come down with that instrument and confer with you about it at the time he signed it?

A. As near as my memory serves me, I asked Mr. Silverstone to go up to the Navy Pay Office and ask for a copy of the proposals for fifty thousand pounds of zinc, and tell Mr. Kettlewell, who was the Chief Clerk, that he represented the Fowler Metal Company. Mr. Silverstone went up to the Navy Pay Office and got this proposal. Now, whether—Mr. Silverstone says we went down to the Dutch room. Whether we went down to the Dutch room or signed it some place else, I don't recall, but I do know Mr. Silverstone made this bid out under my direction and signed it. Exactly where I don't recall. It might have been, as he says, in the Dutch room, and it might have been—he probably is right if he says it was down there.

Q. But at any rate you were conferring with Mr. Silverstone and got Mr. Silverstone to put his signature to that proposal; is that right? A. Yes, sir.

Q. You induced him to do that?

A. Yes, sir. [722—670]

Q. You looked through the proposals you have before you, and you find there a proposal of the Corder Manufacturing Company. Tell the jury the amount of the proposal as made by the W. A. Corder Company, whatever it is. What price do they quote?

A. \$12.60.

Q. \$12.60 per hundred? A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. Mr. Goldberg, did you tell Mr. Corder that you were putting in another and a new bid to the United States Government for this car of zinc?

A. I don't understand just exactly what you mean, Mr. Allen.

Q. (Question repeated.)

A. I heard the question, but I don't understand exactly what you mean.

Q. Well, I thought it was perfectly plain.

A. You mean a separate bid aside from the Great Western Smelting & Refining Company?

Q. Mr. Corder was putting in a bid, and you were putting in a bid, and you have testified and stated that you and Corder were operating together in the sale of zinc to the navy yard? A. Yes, sir.

Q. Now, I am asking you whether or not, after you had put in your proposal at \$12.60 a hundred, you told Mr. Corder that you were going to put in another bid at \$12.45 a hundred in the name of the Fowler Metal Company? A. No, sir.

Q. You didn't. You didn't tell Mr. Corder anything about that? A. No, sir.

Q. Then, Mr. Goldberg, if you had one bid in there at \$12.50, and Mr. Corder had a bid in there at \$12.60, and you were in partnership [723—671] with Mr. Corder, and you put in a third bid under the name of a fictitious concern, or subsidiary concern, as your counsel terms it, of \$12.45, you were attempting there to deceive either Mr. Corder, or the United States Government, or Mr. Kettlewell.

(Testimony of Emar Goldberg.)

Who were you attempting to deceive? Now tell the jury.

A. Mr. Corder and the Great Western had trouble sometime previous to that. The trouble was, that we had been doing this business together. The Corder Company was selling the zinc and giving the Great Western Smelting & Refining Company half of the sale price and half of the profits, providing they had already paid for half the zinc, or depending upon the original condition. There were times when the Great Western Smelting & Refining Company might have sold some zinc. In that case the profits were also equally divided. This was, I believe, only shortly after Mr. Corder had taken over this business from the Pacific Engineering Company, who, by the way, were the people who got the Great Western Smelting & Refining Company interested in the zinc business. So I went down to Mr. Corder's office one day—

Q. Now, what time? Fix the time as nearly as you can.

A. Why, I can't fix the time. It is sometime previous to this, but the exact time I don't recall. You are asking me to fix dates.

Mr. SCHLESINGER.—Approximate the time, Mr. Goldberg.

A. It was sometime previous to this; how much before, I don't remember. I know the circumstances, but the time it is impossible for me to recall every little date in connection with the business of the Great Western Smelting & Refining Company.

(Testimony of Emar Goldberg.)

Mr. ALLEN.—Yes.

A. (Continuing.) So I went down there to Mr. Corder to make a settlement for the amounts that we had sold and he had sold and [724—672] arrange a balance. The matter apparently to me was very clear that he owed us a certain amount of money. After we had figured it up he says, “Well, we owe you so much.” “Why,” I says, “No, Corder, it is \$50.00 more than that.” He says, “No, this is how much we owe you.” “Well,” I says, “Now, Corder—” and I started to explain it to him. He says, “No, that is as much as we owe you.” Well, I got very angry, not because he wanted to pay us \$50.00 less than what I claimed he owed the firm, but because he didn’t want to make any explanation. I was there prepared to make an explanation and, for some reason or other, he didn’t want to make an explanation. He said, “That is all we owe you.” So I says, “Now, Mr. Corder, you will either pay us that amount or I will walk right out of this office up to the office of Kerr & McCord and we will bring suit against you this afternoon.” He says, “Go ahead.” So I walked up to the office of Kerr & McCord and met Mr. Kerr. I told him the circumstances. Mr. Kerr said to me, “Now, Emar, you never have been in court in your life, have you?” I says, “No, I have never been in court in my life, Mr. Kerr.” “Well,” he says, “you can’t afford to go to a courtroom for \$50.00, and can’t afford to have the Great Western Smelting & Refining Company dragged into the courtroom for \$50.00. You

(Testimony of Emar Goldberg.)

take this amount Mr. Corder offers you and quit doing business with W. A. Corder & Company.

Q. Mr. Goldberg, can you give us any approximate time as to when you had this difficulty or difference with Mr. Corder?

A. I don't recall. It was sometime previous to this; how much difference, I don't remember.

Q. Sometime previous. Was it at or near the month—the 1st day of April, 1908?

A. No, it was sometime previous to that.

Q. Sometime prior to that? [725—673]

A. I haven't finished, by the way, Mr. Allen.

A. (Continuing.) So when Mr. Alper came to Seattle on one of his trips, I don't recall what trip it was, it was a previous trip to this, I told him about this transaction. It happened to come up in an offhand sort of a way.

Mr. ALLEN.—This is after April, 1908?

A. This is before April, 1908, Mr. Allen.

Q. Oh!

A. And he rather taunted me on the fact that Mr. Corder—that I would allow any man to take advantage of me like that. “Well,” I says, “what would you do about it?” He says, “I tell you what I would do. I would do some more business with the man until I had made up that \$50.00. After I made up that \$50.00 then I would quit doing business with him.” And that is how we got to doing business with him again.

Q. So—

Mr. SCHLESINGER.—Just tell what happened

(Testimony of Emar Goldberg.)

to him afterwards.

A. As far as Mr. Corder was concerned, since then I have been satisfied he was honest enough in his stand, but simply didn't want to make any explanation, and that is what made me angry at the time. That is all there was to that transaction.

Mr. ALLEN.—So when you put in the \$12.45 bid in the name of the Fowler Metal Company, then you were trying to get the best of or trick Mr. Corder, weren't you?

A. I had a double purpose.

Mr. ALLEN.—So whenever the Corder Company and the Great Western Smelting & Refining Company, in the months prior to April, 1908, whenever they were putting in bids, you really had the same zinc, a community zinc, down in your warehouse, which belonged to you and the Corder Company; is that right? [726—674]

A. Partly right, Mr. Allen. The zinc might have been down at our place, it might have been down to Mr. Corder's place.

Q. But it was community zinc; is that true?

A. In most instances I believe it was.

Q. And whenever you would put in a bid, say, at 16 cents, and Corder would put one in at 14 cents, it didn't make any difference who got the award, you were going to divide the profits?

A. That is right.

Q. That was the system all the way through. Now, on about the 1st day of April, 1908, getting back to that specific time, what day was it, as near

(Testimony of Emar Goldberg.)

as you can recall, when Mr. Alper told you to fix the sum of \$12.50 per hundred for this zinc?

Mr. SCHLESINGER.—I object to that upon the ground it has been inquired into, asked and answered fully half a dozen times.

The COURT.—He may answer. Note an exception.

A. At the time Mr. Alper was in Seattle.

Mr. ALLEN.—Well, that isn't definite as to time. I want to know if it was the first day he landed here, or the last day he left.

Mr. SCHLESINGER.—I object upon the grounds it has been asked and answered. He said he could not give the date accurately.

The COURT.—Answer, if you can, to the best of your knowledge.

Mr. SCHLESINGER.—Exception.

A. That would be an absolute impossibility for me to answer as to a certain day on which he told me to do that. Mr. Alper and I had conversations together every minute of the time that I saw him while he was in Seattle. It may have been one of the first things he told me, and might have been one of the last. I never kept any record of the conversations.

Mr. ALLEN.—It was about the 1st of April, 1908, the idea did reach the mind of Mr. Alper that \$12.50 was the price which you [727—675] should fix on this car of zinc; and on the same day, over across Puget Sound, in the Navy Yard, the same idea reached the mind of this defendant Meyer \$12.50

(Testimony of Emar Goldberg.)

was a proper price to place upon this car of zinc?

Mr. KERR.—Object as argumentative, and take an exception to counsel pursuing that line of argumentative examination.

Mr. SCHLESINGER.—How does he know when it reached the mind of Meyer?

The COURT.—The record of the testimony will bear that out if it is in the evidence.

Mr. SCHLESINGER.—Absolutely unfair, and counsel ought to know it.

The COURT.—Proceed. Exception.

Mr. ALLEN.—Did you tell Mr. Alper you had any information from the navy yard officials, or any of them, with reference to the proper price to be fixed upon the zinc to be purchased by the navy yard?

A. It would have been impossible for me to tell Mr. Alper something I didn't know, and I had no information, so it would have been impossible for me to tell him such a thing.

Q. You had information that the Atlantic Battleship Squadron was coming around, did you not?

A. Oh, everybody knew that.

Q. Everybody knew that. You knew that along in the month of March, did you not? A. Yes, sir.

Q. You knew with reasonable certainty approximately the exact date when the battleship fleet would reach here, did you not?

A. That I don't recall.

Q. You don't recall. Well, when you wrote the letter to Matheson & Heggler in the month of March, dated March 16, 1908, Plaintiff's Exhibit No. 37—

(Testimony of Emar Goldberg.)

you wrote that letter, didn't you (exhibiting same [728—676] to witness)?

Mr. SCHLESINGER.—That is something already in evidence?

Mr. ALLEN.—Yes, Mr. Schlesinger, No. 37.

A. I wrote that letter.

Q. That is your signature, isn't it, Mr. Goldberg?

A. Yes, sir.

Q. Calling your attention to that particular part of the letter which reads as follows: "This is considerably more zinc than the Government ordered, but the navy yard people here have asked us to carry this in stock on account of the battleship fleet coming here." Did Mr. Spear, the officer in charge of the United States navy yard, at Bremerton, ask you to carry this carload of zinc in stock?

A. No, sir.

Q. He did not? A. No, sir.

Q. You mind telling, for the information of the jury, what official of the United States Government asked you to carry this carload of zinc in stock?

A. It was nothing strange for any officer in any department to telephone over, or write, and ask about different affairs. We had been delivering zinc to the yard. Some one from some department telephoned over and asked us if we had a certain kind of size of zinc. I don't recall the exact conversation, except that this remark, or a remark similar to this, was made: "Well, are you folks going to carry this zinc?" "Well," I says, "yes, I think we will carry this zinc from now on." That is what

(Testimony of Emar Goldberg.)

caused me to write this letter in which I asked Matheson & Heggler Zinc Company to keep a price open for thirty or sixty days. It is figuring that if the battleship fleet came around it would only be natural for the navy yard to require another car of zinc. If the navy yard [729—677] required another car of zinc we, already having an option on a car, would be in a position to supply it quicker than anyone else; and if the price advanced we would also be in a position to have the price on which we had bought the previous car, and we would naturally, from every possible point of view, be in a better position than anyone else to supply it. And at the same time I did not order the car of zinc, because I wouldn't order a car of zinc when we already had one car bought without talking a thing of that kind over with Mr. Alper.

Q. One car is enough at the time, Mr. Goldberg. Now, you just stated, in answer to my question, that the navy yard people, some one, whom you can't identify, or won't name,—

A. I didn't say that I wouldn't name him.

Q. Well, will you name him, then?

A. I don't recall. There is nothing strange for any department officer to telephone.

Q. Refreshing your recollection, it wasn't Mr. Meyer, sitting over here, was it, that phoned?

A. No, sir, it wasn't Mr. Meyer.

Q. It wasn't Mr. Meyer? A. No, sir.

Q. But you are sure it wasn't Mr. Spear?

A. I wouldn't swear it wasn't Mr. Spear.

(Testimony of Emar Goldberg.)

Q. If Mr. Spear says it wasn't he was probably right?

A. He probably would be, I don't doubt it.

Q. You think the query was directed to you as to whether you were going to carry zinc of this size in stock?

A. No, I didn't say that.

Q. I understood you to say so?

A. I said we were asked if—it came about like this: Some one [730—678] telephoned from one of the departments of the yard. I don't recall what particular department it was, and—

Q. No,—

Mr. ALLEN.—Mr. Goldberg, for six months prior to April, 1908, or longer than that, months prior to that time, you had been selling zinc of this particular size and kind to the particular navy yard authorities?

A. Yes, sir.

Q. So it wasn't anything new about you having some of this zinc on hand, was it?

A. No, nothing for us having some of it. We didn't always have it on hand.

Q. Was Mr. Alper in the city of Seattle on the 11th day of April, 1908?

A. No, sir.

Q. He was not. You received, either by personal request or otherwise, from the Navy Pay Office in this city that proposal which was just shown you, did you, on the 11th day of April?

A. Yes, sir.

Q. You knew if that contract was on the square that that contract would be submitted to numerous other bidders, did you not?

A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. You noticed on that proposal that it called for delivery within five days for a full car of zinc, did you not? A. May I look at it?

Q. It is right before you, I think.

A. (Witness examines paper.) Yes, sir.

Q. Called for delivery within five days for a full car of zinc. You knew this proposal was going to various other men? A. Yes, sir. [731—679]

Q. On that same day you telegraphed to the Matheson & Heggler zinc people at La Salle, Illinois, for this car of zinc at \$5.80, did you not?

A. So the records show, I believe.

Q. Well, is that a fact?

A. Yes, sir, if the records show that.

Q. You did?

A. That was following out an arrangement that I have already spoken of with Mr. Alper.

Q. Following this 11th day of April, when you ordered the zinc under your contract with the United States Government, you were required to deliver that car of zinc at the navy yard at Bremerton on the 20th day of April, 1908; isn't that right?

A. Yes, sir.

Q. That is true, isn't it? A. Yes, sir.

Q. When did that car of zinc arrive in the city of Seattle? A. I don't recall.

Q. Here is your own bill book, I think, of your own company, Mr. Goldberg, in which it says April 29, 1908, nine days after the date of delivery of this car of zinc?

(Testimony of Emar Goldberg.)

A. That doesn't prove the car of zinc arrived on April 29th.

Q. If the record shows that the car of zinc arrived at the Navy Yard on May 9, 1908, or nearly twenty days after the day on which you contracted to deliver it, can you recall from your recollection how many days it lay down here in front of your warehouse?

A. When we sent the wire in for that zinc was the 11th day of the month.

Q. That is right.

A. If I recall, that was on Saturday. [732—680]

Q. That is right.

A. The wire reached there on Monday. We had an option on a car of zinc. It was the plain size 1 by 6 by 12. I presumed that car would be loaded and shipped on Monday, which was the 13th. We had until the 20th to deliver. There has never been—I withdraw that when I say there never has been. Generally, if you are one, two or three days late, there is no fuss made about it at the navy yard. I figured that car would not take over about eight days, seven to nine days, being rushed and traced to reach Seattle. Therefore, that car would reach Seattle about the 20th or 21st. That is the basis on which I figured when that car was ordered. In fact, it took eleven days. And afterwards, when we got it here, Mr. Corder and I decided to add 9,500 or 10,000 pounds to the car. That was something that I did not know, when the car was ordered.

Q. But you delivered it to the navy yard authori-

(Testimony of Emar Goldberg.)

ties on May 9, 1908, did you not?

A. We shipped it over to the navy yard, I believe, before that.

Q. You shipped it? A. Yes.

Q. Your contract was to deliver it to the navy yard, was it not? A. I understand that.

Q. Take a look at the delivery book of the navy yard authorities down at the bottom of the page.

Mr. ALLEN.—Plaintiff's Exhibit "57," Mr. Kerr.

A. Yes, I see that.

Q. Deliver on May 9th. That is the car of zinc?

A. Yes. The worst that could happen in that case would be they would reject it; but they wanted it pretty bad and it was pretty certain they wouldn't reject it.

Q. Mr. Goldberg, if this requisition had called for delivery of [732½—681] this zinc in thirty days instead of five days, wouldn't it have been much easier for any firm in this city of Seattle to have bid for that zinc, any reputable firm, than if it called for delivery in five days?

A. Not necessarily. I have known of cases where there was more than thirty days and the other firms didn't bid, or didn't appear to get the material from the east because it was not particularly in their line.

Q. You have stated in your direct examination there wasn't a car of this kind of zinc in the city of Seattle? A. Yes, sir.

Q. Now, I am asking you as a business man, and look at these men as business men, and tell them whether or not it would not have invited bidders to

(Testimony of Emar Goldberg.)

have made this a thirty-day delivery instead of a five day delivery?

A. That might have, yes, but I have known many instances when there was more than thirty days when they did not bid. I know of cases by these records when material was delivered to the Government at eighteen and three-quarters, when we could have bid at nine, and I didn't take the opportunity to bid, and we could have made 150 per cent on the material.

Q. You heard the statement of the gentlemen who came here from Illinois and brought the books of the Matheson & Heggler Company, you heard his testimony? A. Yes, sir.

Q. When he testified and stated before this jury that the Whiton Hardware Company, the Seattle Hardware Company, the Schwabacher Hardware Company, or any one of the reputable firms of this city, could have purchased this zinc from his concern at exactly the same price that you purchased it. Wouldn't it have been possible for [733—682] them to bid if the delivery had been thirty days?

A. They could. But the fact is they were buying zinc right along from the W. A. Corder Company, and when a firm gets to doing business with one concern the chances are they will keep on doing it and perhaps never think of telegraphing to Matheson & Heggler.

Q. If the navy yard officials got in the habit of doing business with your firm, and you stood pretty well with Meyer and Kettlewell, you thought they

(Testimony of Emar Goldberg.)

would stay with you and do business?

A. No, sir, that is not necessarily the case.

Q. Now, when you received this check for \$7,-417.09 from the United States Government from whom did you obtain it?

A. From Mr. Kettlewell.

Q. From Mr. Kettlewell. I understand you had some conversation, according to your statement, with Kettlewell at the time you obtained the check?

A. Yes, sir.

Q. You testified, I believe, in your direct examination it was May 26th, 1908, is that right?

A. Yes, sir.

Q. Where did this conversation occur with Kettlewell? A. Right in the main office there.

Q. In the main office. Did you see there on this occasion Mr. Haney, or Mr. Johnson, two of the clerks there under Mr. Kettlewell? A. No, sir.

Q. Were they there on this occasion or not?

A. They were not.

Q. You were there in the office, were you?

A. On the first occasion, yes, sir.

Q. Well, I am talking about this conversation you had with [734—683] Kettlewell and this quarrel.

A. There were two conversations.

Q. This controversy you had with Kettlewell about delivering the check?

A. There were two controversies.

Q. I am talking about that—well, the first controversy you had, then, with Kettlewell in regard to this check, was either one of those two clerks in

(Testimony of Emar Goldberg.)

the navy yard present there with Kettlewell?

A. No, sir, they were not.

Q. Kettlewell was there by himself? A. Yes.

Q. It wasn't in the office of the Paymaster himself, but out in the big room, is that right?

A. Yes, sir.

Q. You received this check on the 26th day of May, 1908, that is right, is it? A. Yes, sir.

Q. The Government check. Refreshing your recollection, the 26th day of May is about Tuesday or Wednesday in the week. Do you recall, and is it a fact, that the 30th day of May, 1908, is in every state of the Union practically, a Memorial Day and a holiday? A. Yes, sir.

Q. If Memorial Day fell on the 30th day of May, 1908, and that was Saturday, and the 31st day of May was Sunday, and you received this check on the 26th day of May, 1908, and cashed it, or delivered it to the bank on June 1st, 1908, you had this check in your possession, then, not the five business days, but three, isn't that true?

A. From your point of view that is true.

Q. Yes, sir. [735—684]

A. We had it the 26th, 7th, 8th and 9th, four days.

Q. But if you received this check along late in the afternoon, or after lunch, so it couldn't be deposited that day, you would really have that check in your possession three banking days?

A. Three full banking days; yes.

Q. Now, on June 1st, 1908, you had this check, as you had it for three days prior thereto, in your

(Testimony of Emar Goldberg.)

physical possession, did you not? A. Yes, sir.

Q. For your information, I call your attention to that 30th falling on Saturday.

A. Yes, I notice that.

Mr. ALLEN.—I ask the Court to instruct the jury, as a matter of law, the 30th fell on Saturday.

Mr. ALLEN.—You had this check in your possession, then, on June 1st, 1908, did you not?

A. Yes, sir.

Q. You have stated to this jury, directly and indirectly, that the Fowler Metal Company was a subsidiary concern of the Great Western Smelting & Refining Company?

A. There is no question about that.

Q. There is no question about that. Then if it was a subsidiary concern, and you had any authority to act for them, why didn't you personally put your signature on that check and send it through in the proper orderly way through the bank?

A. Because Mr. Silverstone originally signed the bid.

Q. Had originally signed the bid?

A. Yes, sir.

Q. In other words, your connection with it had been concealed, is that true?

A. As far as the Navy Pay Office was concerned.
[736—685]

Q. You never disclosed to them the fact you were putting in two bids there for the same concern, did you? A. No, sir.

Q. Never at any time? A. No, sir.

(Testimony of Emar Goldberg.)

Q. Until the Government officials discovered that fact? A. No, sir.

Q. I will ask you to state your reason before this jury here that this check, in your possession for three full banking days, and the Fowler Metal Company being, as you have stated, a subsidiary concern of the Great Western, which you represented as manager, if there was nothing improper about it why didn't you endorse this and send it through the bank in your own way, in your own name?

A. Because, as far as the Navy Pay Office was concerned, it was put in as the Fowler Metal Company, and as we were bidding to the Navy Pay Office I didn't want to use the name of the Great Western Smelting & Refining Company on the back of that check.

Q. You didn't want to use it because you didn't want the Navy Pay Office to discover that fact; isn't that a fact? A. Yes, sir.

Q. That is a fact? A. Yes, sir.

Q. You said, yes, sir, I believe? A. Yes, sir.

Q. Calling your attention to Plaintiff's Exhibit number "5," the first sheet, this photographic copy of the check in the sum of \$7,417.09, calling your attention to the endorsement on the back of that check, I will ask you whether or not that part of the check, Fowler Metal Company, per E. S. Fowler, president, and something, whether that is your signature or not? [737—686]

A. That is *not* my signature. That was written by me.

(Testimony of Emar Goldberg.)

Q. You signed that, you wrote that, did you?

A. Yes, sir.

Q. Do you now claim to this jury, in the presence of this jury, that this E. S. Fowler, president and Mgr., that those are your initials, as you claimed here in the court on the first or second day of the trial?

A. I didn't claim that. I had told Mr. Schlesinger I wrote that and he understood me to say those were my initials.

Q. Didn't you walk directly over between Mr. Kerr and Mr. Schlesinger and state, "Those are my initials," and I said I wouldn't concede that for a moment?

A. No, sir, I didn't do that. Mr. Schlesinger thought I did that. He immediately turned around and said, "I thought you said that." I said, "No, Mr. Schlesinger, I didn't say that; I wrote that."

Q. You wrote that, then? A. Yes.

Q. If you wrote it, then, on this occasion why couldn't you have written it just as well, then without the intervention of Mr. Silverstone?

A. I don't understand what you mean.

Q. You did endorse the name of E. S. Fowler Company, you just testified to that? A. Yes.

Q. Why couldn't you have done that on the second or third day prior to that time, then?

A. Because I was holding the check to see if anything would be done by the Navy Pay Office about stopping payment or anything of that kind.

Q. But you still haven't answered the question.

(Testimony of Emar Goldberg.)

Since you did think [738—687] you were able to write the name of E. S. Fowler and Company—you did do it, as a matter of fact, as you have testified?

A. Yes, sir.

Q. Why didn't you do it, then, without bothering Mr. Silverstone about it?

A. Because it was put through Mr. Silverstone's account.

Q. If you wanted to be fair with the United States Government officials, why didn't you put your name down below that of E. S. Fowler to show the man was exercising authority of signing his name?

A. I didn't think that was necessary, as long as I had Mr. Fowler's authority to sign his name.

Q. You just testified you didn't want to disclose it to the United States authorities.

A. I testified I didn't want the Navy Pay Office to know we had that bid in, although Mr. Kettlewell knew it was our bid.

Q. You heard the statement of Mr. Silverstone on the stand that you sent him to the bank with this check, requested him to put this check through his own account, that he went to the bank with it and returned, and thereafter you wrote E. S. Fowler, President and Mgr. Is his statement in regard to those facts correct? A. It is absolutely.

Q. Absolutely correct? A. Yes.

Q. In other words, Silverstone went over and tried to deposit it and couldn't deposit it, and came back, and he refuses, then, to sign this name, and

(Testimony of Emar Goldberg.)

you signed the name and went over to the bank, is that right?

A. Mr. Silverstone didn't refuse to sign the name, but his own signature was already on the back of that check, and it was necessary for me to sign the name of Fowler Metal Company to the check. [739—688]

Q. If Mr. Silverstone had the authority to sign their name to put in a bid to the United States Government, wouldn't he *had* some authority to sign the check to pay for it?

A. If he wanted to do that in his bank it would be necessary for me to telegraph to San Francisco for written authority for him to go to the bank, and show the bank his written authority to deposit the check. That was a lot of proceedings that I thought entirely unnecessary.

Q. But you had them carried out anyway?

A. No, sir, I didn't have him carry it out anyway. I put the signature on there myself.

Q. But for some reason you wanted this \$7,000 transaction to go through the bank account of Mr. Silverstone, didn't you? A. Yes, sir.

Q. You wanted him—

A. It wasn't the matter of going through the bank account of Mr. Silverstone, that wasn't the reason, but I did not want the name of the Great Western Smelting & Refining Company on the back of that check, because the name of the Great Western Smelting & Refining Company was not on the original bid.

Q. You heard the statement of Mr. Silverstone

(Testimony of Emar Goldberg.)

made in this court that you requested him to put this through his bank. Is that true or is it not true?

A. It is true.

Q. It is true. Well, what did you just say it wasn't true, then for?

A. I didn't say it wasn't true, Mr. Allen.

Mr. ALLEN.—But at any rate, you wanted this check to go through Silverstone's account and not go through yours, or that of the Great Western; isn't that true? [740—689]

A. Yes, but not merely—the reason was not that I wanted it to go through Mr. Silverstone's account. The reason of it was I did not want it to go through the Great Western Smelting & Refining Company's account, but that wasn't the reason for putting it through Mr. Silverstone's account, so it would go through his account, for the purpose of going through his account. The purpose was it would not go through his account. The purpose was it would not go through the Great Western Smelting & Refining Company's account and bear the Great Western's endorsement when the Great Western Smelting & Refining Company's name was not attached to the bid.

Q. The purpose was, then, at least to conceal from somebody the fact that the Great Western Smelting & Refining Company got any of that money; isn't that true?

A. No, the Great Western was entitled to every cent of that money. The Great Western Smelting & Refining Company had delivered the entire

(Testimony of Emar Goldberg.)

amount of the material called for on that proposal and was entitled to every dollar that the Government owed it, and that money on that check belonged to the Great Western Smelting & Refining Company, and Mr. Corder, as his interest appeared in the transaction, and to no one else; and there was no reason on earth, no good, valid reason on earth, why I should not have put it through the account of Mr. Silverstone, or to anybody else on earth, if I wanted to, as long as the Great Western Smelting & Refining Company got the money it was legitimately entitled to.

Q. Why didn't you put it through the account of your lumber company? That would have been all right, wouldn't it, Mr. Goldberg?

A. No, sir, it would not, because I did not mix up my affairs with those of the Great Western Smelting & Refining Company, unless something happened to make it absolutely necessary, and it was entirely unnecessary in this transaction. [741—690]

Q. You were perfectly willing to mix up poor Silverstone in your affairs?

A. I had no idea that anyone would ever come forward and indict me, or I would rather have my head cut off than have Mr. Silverstone indicted, when every man in the grand jury and every attorney knew the man was absolutely innocent, and threw disgrace on him for two years and a half and caused me to suffer for it.

Mr. ALLEN.—This \$7,417 did eventually, at least in part, find its way into the coffers of the Great

(Testimony of Emar Goldberg.)

Western Smelting & Refining Company, did it not?

A. All that the Great Western Smelting & Refining Company was entitled to receive.

Q. All went there. Your troubles, the troubles, Mr. Goldberg, to which you have just stated as regards Mr. Corder, were soon after April 15, 1908, ironed out?

A. I don't know exactly what you mean by ironed out.

Q. Well, smoothed out? A. Yes, sir.

Q. You say, "Yes, sir"? A. Yes, sir.

Q. About what day was that?

A. One or two days after this bid was opened.

Q. One or two days after this bid was opened. You heard the statement of Mr. Silverstone made here, a witness on behalf of the Government, that you came to him and said that one of your competitors was raising a kick, or raising a holler, I have forgotten the exact expression? A. Yes.

Q. Is that true or not?

A. That is true to a certain extent. I don't recall exactly what [742—691] I did say to Mr. Silverstone.

Q. He stated that you then requested him to go with him down to the office of Corder & Company and tell Corder that he, Silverstone, had heard over the telephone Mr. Corder discussing the amount of his bid; is that true or is it not true?

A. Yes, that is true.

Q. As a matter of fact, that was a false statement, wasn't it?

(Testimony of Emar Goldberg.)

A. That was a false statement; yes, sir.

Q. It was a false statement. But you went down then and saw Mr. Corder, and the conversation occurred approximately as testified to by Mr. Silverstone; is that right?

A. How was that? I didn't quite get it.

Q. (Question repeated.)

A. I don't get it yet.

Q. (Question repeated.)

A. Yes, that is true.

Q. You then stated, in the presence of Mr. Corder, it was stated by one of you, by Mr. Silverstone, I believe, that he had overheard a conversation over the telephone, and caused a sort of smile of merriment, didn't it, among the three of you?

A. It didn't exactly cause any smile of merriment; no, sir.

Q. But you knew, and Silverstone knew, that that statement was not true when it was made, didn't you, both of you? A. What statement?

Q. The statement which I have just called your attention to.

A. Regarding the telephone conversation?

Q. Yes.

A. Yes, Mr. Silverstone knew that was not true.

Q. You both knew it was not true?

A. Yes, sir. [743—692]

Q. Then thereafter the three of you repaired to some convenient emporium, and there had a little wine in celebration of this award, did you not?

A. It was not exactly in celebration of this award.

(Testimony of Emar Goldberg.)

Mr. Corder explained to me the original trouble that we had, and showed me what his idea of the transaction at that time was. I don't recall what it was now, but I was satisfied that Mr. Corder wasn't as bad as I thought he was, after all he was absolutely honest when he took the stand he did in regard to the \$50. Well, under those circumstances, I decided it was no more than fair, as long as we had been doing business together, he was entitled to half the profit the same as he had always been getting, and this time he would get them again, and that was the reason. And Mr. Corder said, "All right, Goldberg, let's go over and have a bottle of wine." There was no smile of merriment particularly.

Q. Mr. Goldberg, I understood you to say in your direct examination that Mr. Alper had stated to you the price of zinc was going up, the purchase of this car of zinc would be advantageous to your concern at that time. Was that substantially what he said?

A. No, sir, I never said that, Mr. Allen.

Q. What did you say with reference to the price of zinc at that time and its probable price in the future?

A. What I said was, that Mr. Alper and I talked over the matter of zinc. The subject arose owing to the fact there was a great deal of talk in the newspapers about this battleship fleet. Mr. Alper said to me, "Now, Goldberg, isn't it likely you will have an opportunity to sell something to the Government? The papers are all talking about the amount of money that the fleet is going to need here in Seattle.

(Testimony of Emar Goldberg.)

What do you think the firm can sell?" I said, "Mr. Alper, there is only one thing that is likely we might be [744—693] able to sell, and that is some more zinc. Every one of these ships in the battleship fleet will require some zinc, as I understand it, and they might call for some zinc." Well,—

Q. Well,—

A. I hadn't finished.

Q. Go ahead.

A. He says, "Why don't you buy a car?" I says, "I tell you, Mr. Alper, what I did do. We bought a car of zinc a short time ago, and I didn't like to buy another car without consulting you about it in the first place, and the next place, if the Government does require some zinc they might require sizes that we haven't purchased, then we would be just as well off as if we hadn't bought any zinc. Therefore I wrote a letter to Matheson & Heggler and asked them to keep the price open in order to have an option on a carload of zinc." Then he said to me, "Well, now, I tell you what you do. If the Government does call for any zinc, why, immediately that they call for it, the minute you hear they call for it,—"

Q. Pardon me, Mr. Goldberg, I asked you merely about what he said with reference to the price going up or down. You haven't yet gotten to that point.

A. I am just coming to that point, Mr. Allen.

Q. All right, go ahead.

A. He says, "The minute they call for that you wire and order this car, because you can't possibly

(Testimony of Emar Goldberg.)

lose any money, the price of zinc is low, and if the Government doesn't buy this carload of zinc you have got a carload of zinc at a very low price and the firm can't lost on it, on the transaction, and the probabilities are we will sell it later to some one else. It is good stock in any event." That was the conversation we had, Mr. Allen.

Q. I didn't ask you about the conversation, I asked you about that [745—694] particular part of it. So when you, Mr. Goldberg, inquired in the middle of March, 1908, in regard to a carload of zinc, you inquired as regards a carload of zinc 12 by 6 by 1½ inches, didn't you?

A. No, sir. I think if you will—have you the letter there?

Q. As a matter of fact, when you did order you ordered a car of that specific particular kind, didn't you? A. Yes, sir.

Q. You didn't order an assorted car which would include 24 by 30 and these other sizes?

A. No, sir.

Q. You ordered that particular kind and quantity of zinc?

A. Yes, sir. That was because the Government had asked for a car of that particular size. That was the most desirable size under any conditions.

Q. And there wasn't a car of zinc of that kind in the city, you testified? A. No, sir.

Q. This car of zinc cost you \$5.80 a hundred, is that right? A. \$5.80 a hundred at La Salle.

Q. You purchased later in the summer, not a car,

(Testimony of Emar Goldberg.)

but, I believe, a half car, 25,000 pounds, in the month of August, and that price which you paid for that half car of zinc was likewise \$5.80 a hundred, did you not?

A. I don't recall. The records probably show that.

Q. If the record does show that you would say that is true?

A. All metals are liable to advance or decline. There might be a decline or advance of a cent, or two cents, a pound in any metal any day.

Q. As a matter of fact, it hadn't advanced, had it?

A. It had not advanced. We really expected that it was going to [746—695] advance, though, at that time.

Q. But it did not advance? A. It did not, no.

Q. The gentleman who came here from Illinois, from Matheson & Heggler Zinc Company, testified that the capacity of his plant was about a hundred and fifty tons a day, or words to that effect. Do you recall that? A. Yes, sir.

Q. If any other firm in this city could buy the zinc at the same price on April 1st, 1908, and they could turn out a hundred and fifty tons a day, your option on 50,000 pounds, or twenty-five tons of zinc wouldn't be of very much value, would it, Mr. Goldberg?

Mr. SCHLESINGER.—That is not a proper question. The fact of the production does not mean an actual running production. It is not properly cross-examination and is calling for his opinion.

(Testimony of Emar Goldberg.)

The COURT.—The jury can consider that. Proceed. Exception.

A. You want me to answer that?

Mr. ALLEN.—Calling your attention to a bill of August 19, 1908. Do you recognize that billhead as that of Matheson & Heggler Zinc Company?

A. That is an invoice from Matheson & Heggler for half a car of zinc, about 25,000 pounds.

Q. Delivered to your people? A. Yes, sir.

Q. Great Western Smelting & Refining Company?

A. Yes, sir.

Q. August 29, 1908? A. Yes, sir.

Q. The price as quoted there is \$5.80 a hundred, cash discount [747—696] three per cent, is that right?

A. \$5.80, with a discount of six per cent.

Mr. ALLEN.—We offer that in evidence as part of plaintiff's exhibit.

Mr. SCHLESINGER.—Let me see it, please. (Examining same.) I have no objection.

The COURT.—What is it for?

Mr. ALLEN.—This is a statement rendered by Matheson & Heggler of August 19, 1908, to the Great Western Smelting & Refining Company for 26,760 pounds, mostly of $\frac{1}{2}$ by 6 by 12.

Mr. SCHLESINGER.—It occurs long after the alleged transaction, your Honor, and your Honor ruled out some of those.

The COURT.—“81” that will be.

(Paper referred to received in evidence and marked Plaintiff's Exhibit “81.”)

(Testimony of Emar Goldberg.)

Mr. ALLEN.—You said in your direct examination, Mr. Goldberg, that Kettlewell told you, as one of the reasons for asking you to come through to him, that other firms and concerns in the city of Seattle had made adequate financial arrangements with him. What concerns did he mention in that connection?

A. I didn't say that, Mr. Allen. What I said—

Q. Or words to that effect?

A. — other people had treated him right.

Q. Did he mention, or attempt to mention, to you any other concerns which had treated him right?

A. No, sir.

Q. Now, you had been doing business with Mr. Corder as a partner, we will assume that for the moment, in this zinc matter since away along in the summer preceding, that is, since 1907?

A. We had been doing business with him for some time previous to [748—697] that, but I don't recall exactly when that arrangement started. It was when he purchased the business of the Pacific Engineering Company.

Q. You have testified that the importunities of Mr. Kettlewell began in December, 1907. Now, during all the period from December, 1907, down to the consummation of this deal, that is, the sale of the car of zinc to the Government, you were then in close business relations with Mr. Corder, the other defendant here, were you not?

A. Why, I am under the impression that we were. I think we were out of zinc at one time.

Q. Oh, pardon me, you didn't understand the

(Testimony of Emar Goldberg.)

question. Read the question.

A. Yes, I did understand you. You asked me if we weren't in close business connections with Mr. Corder all that time.

Q. Close business relations.

A. Yes. I am under the impression there was one period of time there when neither of us had any zinc. I may be wrong about that.

Q. But I am talking about your general business relations with Mr. Corder. They were quite close during that period of time, isn't that true?

A. Yes.

Q. You said yes, as I understand you. Now, did you tell Mr. Corder, during these times that Mr. Kettlewell was importuning you for money, as you expressed it, did you tell Mr. Corder, the defendant sitting here, that this man Kettlewell was attempting to borrow and had borrowed, money from you?

A. No, sir, I never told that to Mr. Corder.

Q. Corder never knew that fact, then?

A. No, sir.

Q. You didn't tell him you had loaned him some money? A. No, sir. [749—698]

Q. Never charged that up against Corder?

A. No, sir.

Q. That was just Goldberg? A. Yes, sir.

Q. Goldberg's private speculation?

A. No, sir, no speculation.

Mr. ALLEN.—Your books show, I believe, that you delivered to the navy yard 59,575 pounds of zinc on this requisition 438. Is that right?

(Testimony of Emar Goldberg.)

A. Whatever the books show.

Mr. ALLEN.—Mr. Goldberg, did you ever at any time complain to the Paymaster of the Navy at Washington with reference to the mistreatment or the misconduct which you thought had been on the part of Mr. Kettlewell toward you, did you ever write to him? A. No, sir.

Q. You never did. Did you ever write to Mr. Spear and complain of the action of this man Kettlewell? A. No, sir.

Q. Did you ever communicate to Mr. Orr by writing or personally? A. No, sir.

Q. So whatever may have been the advice of Mr. Kerr to you with regard to it, it didn't result in your calling the matter to the attention of the properly constituted and responsible officers of the United States Navy; isn't that true?

A. No, sir. I explained the reason for that.

Q. Well, we will let the jury figure that out. Calling your attention, Mr. Goldberg, to what purports to be a letter, I ask you whether you can identify your signature to that letter.

A. Yes, sir, that is my signature.

The COURT.—Has that been marked? [750—699]

Mr. ALLEN.—Not yet, your Honor. We ask that be marked as Plaintiff's Exhibit "82."

(Paper referred to marked Plaintiff's Exhibit "82.")

Mr. KERR.—What is the date of it?

Mr. ALLEN.—That is August 13, 1908.

(Testimony of Emar Goldberg.)

Mr. KERR.—After the transaction?

Mr. ALLEN.—A little over a month after the transaction was closed.

Mr. KERR.—I don't think that is material or proper either, your Honor.

Mr. ALLEN.—Any objection to it?

Mr. KERR.—Yes, object to it on the ground that it is incompetent, irrelevant and immaterial, refers to matters long subsequent to the transaction.

The COURT.—I let matters in yesterday on the part of the defense as late as December of the same year. I did exclude, however, matters as late as 1910.

Mr. ALLEN.—It is the relation between Corder and Goldberg.

The COURT.—Very well. You might show it to Mr. Vanderveer.

Mr. VANDERVEER.—(Examining same.) No objection.

Mr. ALLEN.—This, gentlemen, is a letter under the head of Great Western Smelting & Refining Company of San Francisco, the Seattle headline, dated August 8, 1908. Matheson & Heggler Zinc Company, La Salle, Illinois. (Reading same to jury.)

Mr. KERR.—Now, your Honor, I move the jury be instructed to disregard that letter as being absolutely incompetent, irrelevant and immaterial to any issue in this case, and as absolutely improper, and I ask your Honor to read the letter.

(Testimony of Emar Goldberg.)

The COURT.—I don't see that the letter is material.

Mr. ALLEN.—He testified to their relations after this time in [751—700] April.

The COURT.—I don't think that would make any difference, any subsequent promise between these people. The jury is instructed to disregard the letter which was just read, and that will be withdrawn as an exhibit in the cause.

Mr. ALLEN.—Mr. Goldberg, in your direct examination you explained at length to this jury about the exacting specifications required on the part of the United States Government in the purchase of its material for the navy yard, did you not?

A. I don't think I did.

Q. Well, you covered that subject, I thought, quite extensively.

Mr. ALLEN.—Mr. Goldberg, were the navy yard authorities quarrelsome or exacting about the acceptance of a carload of zinc which you agreed to deliver in five days and actually delivered about twenty-five, in about twenty or twenty-five days, were they exacting in that case?

A. Not in that particular case, but there never was a man that ever sold anything to the United States Government who knew whether or not it was going to be accepted, rejected, sent back to him, or anything else done with it.

Mr. ALLEN.—Have you examined, Mr. Goldberg, this sheet prepared by Mr. House from your own books with reference to the sales made in small

(Testimony of Emar Goldberg.)

quantities to local merchants?

Mr. KERR.—I object to that on the ground it is not cross-examination in any sense at all. The witness' attention was not called to it, simply something that was prepared here by one of the Government's witnesses, and is not cross-examination and is improper.

Mr. ALLEN.—Will you kindly examine it at this time, this—

Mr. KERR.—Well, I haven't any objection to his examining it, but I will renew my objection on the ground it is not cross-examination, [752—701] not a document this witness has prepared.

The COURT.—It don't appear to be prepared by this witness.

On redirect examination by Mr. VANDERVEER the said witness testified as follows:

Q. You mentioned casually in your examination by one of counsel that it was at the suggestion of the Pacific Engineering Company that you first engaged in the zinc business? A. That is true.

Q. In what business was the Pacific Engineering Company engaged?

A. The Pacific Engineering Company was engaged in the sale of supplies to steamship companies.

Q. Steam engineering supplies?

A. Steam engineering supplies. Mr. C. B. Lamont was at the head of the company at that time.

Q. And this boiler zinc was an article which they handled in their business?

A. Oh, yes, it was in their regular line of business.

(Testimony of Emar Goldberg.)

Q. And was an article which previously you had never handled?

A. We had never handled. Mr. Lamont was the one who got us to handle a good deal of this boiler zinc.

Q. As I understand, the Pacific Engineering Company at that time was a small concern?

A. Yes, a comparatively small concern.

Q. And your concern was a large concern with a large credit? A. Yes, sir.

Q. And you found it mutually advantageous, did you, to engage in this business with them for the credit which you enjoyed and the customers which they had? [753—702]

A. I admired Mr. Lamont very much, and he suggested that we go into this zinc business. We would pay for the zinc, and I believe the first zinc that ever was purchased was stored at the Pacific Engineering Company's plant. The Great Western Smelting & Refining Company paid for it and the Pacific Engineering Company sold every pound of it, and that was at least a year, and possibly two years before a pound of zinc was ever sold to the Government to my knowledge.

Q. Now, in the year 1906, sometime in that year, Mr. Corder bought out the Pacific Engineering Company? A. Yes, sir. I don't recall that—

Q. He had previously been in the steam engineering supply business in San Francisco?

A. So I understand.

Q. And when he bought out that company he in-

(Testimony of Emar Goldberg.)

herited the business which you and they had built up in the zinc business?

A. The business that we had been doing through the Pacific Engineering Company and with the Pacific Engineering Company necessarily we then began to do with the W. A. Corder Company.

Q. Did Mr. Corder buy directly any of this zinc, or you did the buying, did you not?

A. I think that the Great Western Smelting & Refining Company was doing all the buying.

Q. And your concern was a concern that was acquainted with the metal nature of the business and acquainted with metal values and metal prices?

A. Yes, sir.

Q. Isn't it a fact, Mr. Goldberg, that it was quite a common thing for Mr. Corder, both in sales to the Government and in sales to private individuals, to call you up and ask you what zinc was worth? [754—703] A. Oh, yes.

Q. Because of the knowledge which you had in the metal business?

A. It was a natural thing for him to do that. There might be a rise or decline of a cent a pound, or cent and a half a pound, in one day.

Q. The zinc which you handled your company bought from whatever concern you happened to be dealing with, using the Matheson-Heggler Company, and you billed Mr. Corder one-half of the cost of it?

A. As a rule.

Q. One-half the freight?

A. That was the agreement.

(Testimony of Emar Goldberg.)

Q. One-half of whatever expenses were entailed or incurred in handling it? A. Yes, sir.

Q. And you handled the matter as a partnership. It was not your custom, was it, to voucher those expenses? A. No.

Q. Nor his custom to require it?

A. No, sir. It was handled the same as any other deal was handled. Mr. Corder paid one-half the cost of the zinc and we credited his account with one-half the cost and charged him with one-half the freight, just the same as—

Q. It was an ordinary business transaction which had advantages to your concern in the—

A. It was a clean-cut business transaction that was advantageous to both concerns.

Q. The advantage to your concern was the fact that Mr. Corder had a clientele, or the Pacific Engineering Company, among the consumers of this zinc, was it not? A. Yes, sir. [755—704]

Q. And the advantage to his concern was that your concern had the credit which he did not?

A. Yes, sir.

Mr. VANDERVEER.—That is all.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Goldberg, did you or did you not tell Mr. Corder, on the 11th day of April, 1908, that you had ordered a car of zinc from La Salle, Illinois, by telegraph, in which he was interested one-half?

A. I did not.

(Testimony of Emar Goldberg.)

Q. You did not. Did Corder know that you had ordered that car of zinc at that time?

A. He did not.

Q. When did he learn that fact?

A. He learned that fact on about the 17th, or a day, or two, or three days, I don't recall when it was, after the bids were opened, when we had that talk and agreed to be friends from that time.

Q. Did you communicate with Mr. Corder, or is it a mere coincident, that you put in a bid for this zinc at \$12.50, and Mr. Corder, your copartner, prior thereto, put in a bid at \$12.60?

A. We probably talked that thing over. I don't recall whether we did. We probably did.

Q. And you decided to put in a bid at \$12.50 and he was going to put in a bid at \$12.60?

A. Yes, sir.

Mr. ALLEN.—That is all. [756—705]

On recross-examination by Mr. VANDERVEER the said witness testified as follows:

Q. Mr. Corder left the purchasing of zinc to you?

A. Entirely.

Q. In all instances? A. Yes, sir.

Q. Didn't require any consultation with you, didn't feel he knew anything about the price, or time to buy, or the terms to buy? A. That is true.

Mr. VANDERVEER.—That is all.

Mr. SHIPLEY.—Your Honor please, at this time here are a few of these folders we did not complete the identification of the other day. Mr. House will kindly take the stand again.

[Testimony of Hiram S. House, for Defendants
(Recalled).]

HIRAM S. HOUSE, recalled as a witness on behalf of the defendants, further testified as follows:
(By Mr. SHIPLEY.)

Mr. RIDDELL.—Just identify the whole business at once, Mr. House.

Mr. SHIPLEY.—Those are folders he bought in at our request.

The COURT.—Take the stand, Mr. House, or are you identifying them now?

Mr. HOUSE.—Yes, sir.

Mr. SHIPLEY.—Folder *contain* contract No. 7104 with the Schwabacher Building Company—

The COURT.—Contract number what?

Mr. SHIPLEY.—No. 7104, dated October 17, 1907. We would like to have that identified.

(Folder referred to marked Defendant's Exhibit A-49 for Identification.) [757—706]

Open Purchase requisition No. 5, series 1909, dated June 27, 1908.

(Folder referred to marked Defendant's Exhibit A-50 for Identification.)

These two exhibits just handed to Mr. House, he states were received by him from the General Storekeeper's Office at the navy yard this morning. The three remaining are those that he has had in his custody something like two years. One, Open Purchase Requisition No. 169, series 1910, February 12, 1910.

(Testimony of Hiram S. House.)

(Folder referred to marked Defendant's Exhibit A-51 for Identification.)

The next is Open Purchase Requisition No. 25, Series 1910, date May 7, 1910.

(Folder referred to marked Defendant's Exhibit A-52 for Identification.)

The next is Open Purchase Requisition No. 481, Series 1908, dated April 14, 1908.

(Folder referred to marked Defendant's Exhibit A-53 for Identification.)

Mr. SHIPLEY.—That is all your Honor.
(By Mr. SCHLESINGER.)

Q. Mr. House, I will show you a folder bearing the caption Series 1908—

The COURT.—Have those been identified?

Mr. SCHLESINGER.—No, your Honor, we haven't had time.

The COURT.—Can't Mr. House take these and examine them and come in here to-morrow morning and have them all marked?

Mr. HOUSE.—I will identify them all now. [758—707]

The COURT.—Suppose you do that and give the marks to the clerk. It will save a lot of time.

Mr. ALLEN.—The witness states he has had these nearly two years and a half, and he received them from the Navy Pay Office in Seattle; all of them?

Mr. HOUSE.—Yes, sir.

The COURT.—All right, then, start in and just dictate to the stenographer and to the clerk here the identification and have them marked.

(Testimony of Hiram S. House.)

The WITNESS.—Requisition No. 463—shall I say it is Navy Pay Office folder each time?

The COURT.—It is Navy Pay, all Navy Pay?

A. Yes, sir.

The COURT.—All right, all Navy Pay Office folders? A. Yes, sir.

The COURT.—Series? A. 1908; April 9, 1908.

(Folder referred to marked Defendant's Exhibit A-54 for Identification.)

Requisition No. 6, Series of 1909, dated November 13, 1908.

(Folder referred to marked Defendant's Exhibit A-55 for Identification.)

Requisition 466, Series 1908, dated April 11, 1908.

(Folder referred to marked Defendant's Exhibit A-56 for Identification.)

No. 374, Series 1908, dated March 9, 1908.

(Folder referred to marked Defendant's Exhibit A-57 for Identification.)

Requisition No. 20, Series 1908, dated August 5, 1907. [759—708]

(Folder referred to marked Defendant's Exhibit A-58 for Identification.)

Requisition No. 181, Series 1908, dated November 26, 1907.

(Folder referred to marked Defendant's Exhibit A-59 for Identification.)

Requisition No. 102, Series of 1909, dated July 18, 1908.

(Folder referred to marked Defendant's Exhibit A-60 for Identification.)

(Testimony of Hiram S. House.)

No. 430, Series of 1908, dated March 30, 1908.

(Folder referred to marked Defendant's Exhibit A-61 for Identification.)

Requisition No. 266, Series of 1908, dated January 22, 1908.

(Folder referred to marked Defendant's Exhibit A-62 for Identification.)

Requisition No. 404, Series of 1908, dated March 20, 1908.

(Folder referred to marked Defendant's Exhibit A-63 for Identification.)

Requisition No. 439, Series of 1908, dated April 1st, 1908.

(Folder referred to marked Defendant's Exhibit A-64 for Identification.)

Requisition No. 323, Series 1908, dated February 15, 1908.

(Folder referred to marked Defendant's Exhibit A-65 for Identification.)

Requisition No. 641, Series of 1908, dated May 22, 1908.

(Folder referred to marked Defendant's Exhibit A-66 for Identification.)

Requisition No. 100, Series 1909, dated July 18, 1908.

(Folder referred to marked Defendant's Exhibit A-67 for Identification.)

Requisition No. 101, Series of 1909, dated July 18, 1908. [760—709]

(Folder referred to marked Defendant's Exhibit A-68 for Identification.)

(Testimony of Hiram S. House.)

Requisition No. 201, Series 1909, dated August 12, 1908.

(Folder referred to marked Defendant's Exhibit A-69 for Identification.)

Requisition No. 202, Series 1909, dated August 12, 1908.

(Folder referred to marked Defendant's Exhibit A-70 for Identification.)

Requisition 241, Series of 1909, dated August 22, 1908.

(Folder referred to marked Defendant's Exhibit A-71 for Identification.)

Requisition No. 15-L, Series 1911, dated July 22, 1910.

(Folder referred to marked Defendant's Exhibit A-72 for Identification.)

Requisition No. 54-L, Series 1911, dated September 22, 1910.

(Folder referred to marked Defendant's Exhibit A-73 for Identification.)

Requisition No. 10, Series 1911, dated June 20, 1911.

(Folder referred to marked Defendant's Exhibit A-74 for Identification.)

Requisition No. 12, Series 1911, dated June 24, 1910.

(Folder referred to marked Defendant's Exhibit A-75 for Identification.)

Requisition No. 159, Series 1910, dated February 4, 1910.

(Testimony of Hiram S. House.)

(Folder referred to marked Defendant's Exhibit A-76 for Identification.)

Requisition No. 158, Series 1910, dated February 3, 1910.

(Folder referred to marked Defendant's Exhibit A-77 for Identification.)

Requisition No. 4, Series 1909, dated July 20, 1908.
[761—710]

(Folder referred to marked Defendant's Exhibit A-78 for Identification.)

Requisition No. 43, Series 1909, dated June 25, 1908.

(Folder referred to marked Defendant's Exhibit A-79 for Identification.)

Requisition No. 84, Series 1909, dated July 10, 1908.

(Folder referred to marked Defendant's Exhibit A-80 for Identification.)

Requisition No. 92, Series 1909, dated July 13, 1908.

(Folder referred to marked Defendant's Exhibit A-81 for Identification.)

Requisition No. 99, Series 1909, dated July 18, 1908.

(Folder referred to marked Defendant's Exhibit A-82 for Identification.)

Requisition No. 107, Series 1909, dated July 20, 1908.

(Folder referred to marked Defendant's Exhibit A-83 for Identification.)

(Testimony of Hiram S. House.)

Requisition No. 124, Series 1909, dated July 24, 1908.

(Folder referred to marked Defendant's Exhibit A-84 for Identification.)

Requisition No. 133, Series 1909, dated July 22, 1908.

(Folder referred to marked Defendant's Exhibit A-85 for Identification.)

Requisition No. 147, Series 1909, dated July 29, 1908.

(Folder referred to marked Defendant's Exhibit A-86 for Identification.)

Requisition No. 151, Series 1909, dated July 30, 1908.

(Folder referred to marked Defendant's Exhibit A-87 for Identification.)

Requisition No. 154, Series 1909, dated July 31, 1908. [762—711]

(Folder referred to marked Defendant's Exhibit A-88 for Identification.)

Requisition No. 177, Series 1909, dated April 8, 1909.

(Folder referred to marked Defendant's Exhibit A-89 for Identification.)

Requisition No. 238, Series 1909, dated August 21, 1908.

(Folder referred to marked Defendant's Exhibit A-90 for Identification.)

Requisition No. 279, Series 1909, dated September 11, 1908.

(Folder referred to marked Defendant's Exhibit

(Testimony of Hiram S. House.)

A-91 for Identification.)

Requisition No. 280, Series 1909, dated September 12, 1908.

(Folder referred to marked Defendant's Exhibit A-92 for Identification.)

Requisition No. 314, Series 1909, dated September 30, 1908.

(Folder referred to marked Defendant's Exhibit A-93 for Identification.)

Requisition No. 330, Series 1909, dated October 6, 1908.

(Folder referred to marked Defendant's Exhibit A-94 for Identification.)

Requisition No. 507, Series 1909, dated March 4, 1909.

(Folder referred to marked Defendant's Exhibit A-95 for Identification.)

This is a yard folder.

The COURT.—Navy yard?

A. Yes, sir, navy yard folder for Requisition No. 494, Series of 1909, dated January 23, 1909.

(Folder referred to marked Defendant's Exhibit A-96 for Identification.)

Now, there is one other folder that Mr. Schlesinger asked me for [763—712] that I couldn't lay my hands right on.

The COURT.—One more?

A. Yes. I didn't have time to make an extended search for it.

The COURT.—Very well.

Mr. VANDERVEER.—If the Court please, if I

(Testimony of Ed. L. Terry.)

may be permitted, I would like to call a witness here, Mr. Terry, the City Treasurer.

The COURT.—Very well.

[Testimony of Ed. L. Terry, for Defendants.]

ED. L. TERRY, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. VANDERVEER.)

Q. Your name is Ed. L. Terry? A. Yes, sir.

Q. You live in this city? A. Yes, sir.

Q. About how long, Mr. Terry?

A. I was born here.

Q. About how long ago is that?

A. 51 years ago.

Q. You are present City Treasurer of this city?

A. Yes, sir.

Q. You know Mr. W. A. Corder, one of the defendants in this case? A. I do.

Q. About how long have you known him, Mr. Terry? A. Oh, I think for six or seven years.

Q. You knew him before June 1st, 1911. You know what his reputation was in this community for honesty and integrity [764—713] at that time?

A. When was this, you say?

Q. Well, prior to the indictment in this case, prior to June 1st, 1911, do you know what his reputation in the community was for honesty and integrity, and is now for that matter? A. I do.

Q. What is it? A. It is good.

Mr. VANDERVEER.—Cross-examine.

(Testimony of Ed. L. Terry.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You don't know anything about his relations with the United States Navy Yard, do you?

A. I do not.

Mr. VANDERVEER.—That is not cross-examination, your Honor. I object. A man's reputation is what the community thinks of him in the community where he lives.

Mr. ALLEN.—That is all.

Mr. MORRIS.—May it please your Honor, at this time, with a view of saving time, there is an exhibit that was offered in case 2042, the former trial of the defendant, Meyer, being No. 61, in the possession of the Government, or in the files of this court. At this time we would like to have an order of Court, directing that Mr. House deliver to us, or bring into court, Plaintiff's Exhibit "61."

Mr. ALLEN.—Here it is. (Handing counsel exhibit.)

Mr. HOUSE.—Your Honor, they asked for a folder that I didn't find [765—714] yesterday afternoon. I would like to identify this one, so it can go in with this other page I put in yesterday.

By the COURT.—That would be A-97.

Mr. HOUSE.—This is Navy Pay Office Folder No. 247, Navy Pay Office Requisition No. 247, Series of 1909, dated August 26, 1908.

Mr. SCHLESINGER.—If your Honor please, the bonus account introduced in evidence by the Government omits to include certain items, running

(Testimony of Ed. L. Terry.)

from February 17, 1912, down to November 7, 1912, and omits the item of July 8 of the preceding year.

Mr. ALLEN.—What year?

Mr. SCHLESINGER.—1911, so these items I wish to read in evidence now as a part of that bonus account.

“July 8, check 8939, folio 61, \$110. February 17, 1912, check 1045, folio 155, \$50. June 17, 1912, check 10691, folio 58, \$50. October 23, 1912, check 11,295, \$250. November 7, check 11,370, folio 114, \$85. Total, \$385.” We ask that be added to the bonus account.

I wish also to make the statement in that connection, that the indictment in this case was filed on May 31, 1911.

Mr. ALLEN.—I object to your making that statement.

Mr. SCHLESINGER.—I would like to have the jury look at those items. The items were omitted—I don’t say they were intentionally omitted—I think Mr. House overlooked them. The latter part of it may go in as an exhibit.

(Whereupon said items were introduced in evidence, and marked Plaintiff’s Exhibit A-98.)

[Testimony of Francis G. Frink, for Defendants.]

FRANCIS G. FRINK, produced as a witness on behalf of the defendants, testified as follows, to wit:

Direct Examination by Mr. SCHLESINGER.

Q. State your name. [766—715]

A. Francis G. Frink.

Q. Where is your residence? A. Seattle.

(Testimony of Francis G. Frink.)

Q. How long have you lived here? A. 368—

Q. What is your vocation or occupation?

A. Manufacturer.

Q. With what concern, if any, are you connected?

A. Washington Iron Works.

Q. Do you know Mr. Emar Goldberg?

A. Yes, sir.

Q. How long, please, have you known him?

A. About ten or eleven years.

Q. Have you had many business relations with him?

A. Yes, sir, our company has done a great deal of business with him during that time.

Q. Talk a little louder.

A. I say, our company has done considerable business with him since that time, during that time.

Q. Founded on verbal arrangements and otherwise?

A. Yes, sir, we have done a great many thousands of dollars worth of business, upon verbal agreements alone.

Q. Have you had opportunities of observing his conduct generally? A. Yes, sir.

Q. Knowing him in that way, for that length of time, do you know his general reputation in this city for the qualities of truth, of honesty and of integrity? A. Yes, sir, it is good.

Mr. ALLEN.—I move to strike that answer out and confine it to truth and veracity. [767—716]

By the COURT.—That answer will be stricken;

(Testimony of Francis G. Frink.)

the jury are instructed not to consider at all the answer as made.

Q. Is that reputation good or bad?

Mr. ALLEN.—Without the preliminary question, you are not entitled to answer it.

Q. Do you know the general reputation of Emar Goldberg in this city for the qualities of truth, honesty and integrity. Say yes or no. A. Yes.

Mr. ALLEN.—I object to that for the same reason. He can confine the witness to the question as to his truth and veracity.

(Argument by counsel.)

(Question withdrawn.)

Q. Do you know his general reputation in this city for the qualities of honesty and integrity?

A. Yes, sir.

Q. Is that general reputation good, or is it bad?

A. It is good amongst my line of trade, yes, sir.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. The question propounded to you involved a present time and a present meaning. He asked you as to whether or not the reputation of this man was good, in your opinion, and you answered that it was good in your particular line of business. Are you answering now with reference to the year 1908 or the year 1913?

A. I am answering for my whole acquaintance with Mr. Goldberg.

Q. During the entire time?

(Testimony of Francis G. Frink.)

A. The entire period up to date.

Q. Now, your acquaintance with him, and your experience with him, is confined to the purchase of material, probably from his plant, isn't that so, for use in the Washington Iron Works? [768—717]

A. Yes, sir, and a general acquaintance.

Q. Your contact with him is in your line of business. You don't know anything about his experience in bidding on Government contracts, do you?

A. No, sir.

Mr. SCHLESINGER.—I object to that as not being proper cross-examination. I move to strike out the answer, if your Honor please, as well as the question.

By the COURT.—No, I think it may stand. Motion overruled. Exception allowed.

Q. Did you ever hear Sarah Rubenstein, who is the widow of Mr. Rubenstein, who ran the American Iron & Metal Company, did you ever discuss with her the honesty and integrity of the defendant, Goldberg, who was sitting here a moment ago?

Mr. SCHLESINGER.—I object to that on the ground it is not competent cross-examination.

By the COURT.—He may answer. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I don't know such a party.

Q. You remember the American Iron & Metal Company, that used to be down here on Second Avenue? A. No, sir.

Q. You never discussed that matter with Mrs. Rubenstein then at any time, as I understand?

(Testimony of Francis G. Frink.)

A. I don't know her at all.

Q. You never discussed the question of his probity or integrity with any official of the United States Government, did you? A. No, sir.

Mr. SCHLESINGER.—I object to that as not being proper cross-examination. [769—718]

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. Your experience with Mr. Goldberg, then, is confined to an experience covering a number of years, in the purchase of material from the Great Western Smelting & Refining Company, isn't that true?

A. Yes, general acquaintance extending over that period.

Q. In other words, you are basing, of course, your statement to the jury, upon the fact that Mr. Goldberg never double-crossed you, or anything of that sort?

Mr. SCHLESINGER.—I object to that, and charge improper conduct upon the part of the District Attorney.

By the COURT.—I think the question, in the way it is propounded, is objectionable. The jury are instructed not to consider the question.

Q. Who did you ever hear discuss the matter of Mr. Goldberg's probity, integrity, honesty and a few other qualities?

A. You mean in connection with this case?

Q. No, in connection with any matter.

A. Why, I think I have discussed it with other

(Testimony of Francis G. Frink.)

people, in our trade, as to his character, at different times.

Q. You think, but at this time you are not positive you have?

A. Well, I couldn't say as to that. My opinion as to Mr. Goldberg is based upon personal contact, personal experience with him, as anyone would judge—

Q. Just the fact that he never gave you the worst of it, in selling supplies—

Mr. SCHLESINGER.—That is a repetition of a highly improper question, and counsel knows it and ought to know— A. No.

By the COURT.—He may answer that question. OBJECTION OVERRULED: [770—719] EXCEPTION ALLOWED.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. You have testified, in a word, that you have had with Mr. Goldberg, large transactions, covered by verbal agreements?

Mr. ALLEN.—I *objection* to that as being gone over in the direct examination.

[Testimony of John C. Slater, for Defendants.]

JOHN C. SLATER, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows, to wit:

Direct Examination by Mr. VANDERVEER.

Q. State your name. A. John C. Slater.

Q. You live in the city of Seattle? A. Yes, sir.

Q. What is your occupation?

(Testimony of John C. Slater.)

A. Financial broker.

Q. How long have you lived in this city?

A. Fifteen years.

Q. How long have you been in this business?

A. About ten years.

Q. You have, at times, occupied positions of public confidence, to which you were elected by the people, or a portion of the people, of the city?

A. I have held no public office.

Q. I don't mean public office, position of public confidence? [771—720]

A. You may call it that.

Q. What were they?

A. I am Trustee and Vice-President of the Chamber of Commerce, at the present time.

Q. You were president of the Tilikums here, were you not? A. I still am.

Q. Do you know Arthur Corder? A. Yes, sir.

Q. How long have you known him?

A. Ever since he came to the city.

Q. What has been the nature of your acquaintance with him? A. Purely personal.

Q. Do you know a number of his friends and acquaintances? A. Yes, sir.

Q. You mingle, in other words, in the same business and social circles, formerly did? A. Yes.

Q. Do you know his reputation in this community, for honesty and integrity? A. Yes.

Q. What is it? A. It is good.

(Testimony of John C. Slater.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. With whom did you ever discuss the question of the integrity of Mr. Corder? A. No one.

Q. That frame of mind of yours, then, seems to be based upon the fact of your personal experience with him, is that true? A. Yes. [772—721]

Q. The fact Mr. Corder has never mistreated you in any way, that is the reason for your statement that you know his reputation; is that right?

A. He has always been an honored guest in my family.

Q. Personal friend, relationship?

A. Personal friend, yes.

On redirect examination by Mr. VANDERVEER the said witness testified as follows:

Q. Did you ever discuss counsel's reputation with anybody?

Mr. ALLEN.—Which counsel?

Q. You. Did you hear him discussed?

A. I have not.

Q. Have you any doubt whether it is good or bad?

Mr. ALLEN.—I object to that.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Do you know Mr. Goldberg here?

A. I know Mr. Goldberg; yes, sir.

Q. How long have you known him?

A. I should say five or six years, maybe longer.

(Testimony of John C. Slater.)

Q. Do you know the general reputation of Mr. Goldberg for the qualities of honesty and integrity?

Mr. ALLEN.—I wish he would confine it to 1908.

By the COURT.—Yes, give him the time.

Q. Have you known and do you know his general reputation during the five or six years that you have known him? A. Yes. [773—722]

Q. Would you say that general reputation to be good or bad, for those qualities?

A. I should say, good.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. You have known the defendant, Goldberg, you answered, five or six years. Refresh your recollection, now, was it five or was it six years ago that you first met him?

A. I couldn't say that. My acquaintance with him has been purely personal, along fraternal and social lines.

Q. Did it begin, then, in 1908, or did it possibly begin after 1908? A. I couldn't say that.

Q. You wouldn't say positively it began before 1908, would you?

A. I think probably shortly after his arrival here, I met him.

Q. You think, probably, shortly after his arrival you met him? A. Yes, sir.

Q. With whom did you ever discuss the question of the probity or integrity of Mr. Goldberg?

A. No one.

Q. No one has ever discussed the matter with you?

(Testimony of John C. Slater.)

A. No, sir.

Q. You are basing your conclusion upon the fact of your own personal, social contact with Goldberg; is that right? A. Yes, sir.

Q. It isn't based upon any general reputation you got from inquiry, anything of that sort?

A. Oh, no. [774—723]

[Testimony of James F. Lane, for Defendants.]

JAMES F. LANE, having been first duly sworn, testified as follows on behalf of the defendants.

Direct Examination by Mr. VANDERVEER.

Q. State your name. A. James F. Lane.

Q. What is your business? A. Banker.

Q. With what bank are you connected?

A. Scandinavian-American Bank.

Q. In what capacity? A. Cashier.

Q. How long have you been with that bank?

A. About fifteen years.

Q. You are acquainted with W. A. Corder, the defendant here? A. Yes, sir.

Q. How long have you known him?

A. Some six or seven or eight years.

Q. What has been the character of your acquaintance with him?

A. Personal and business, in a business way also.

Q. He did business with your bank?

A. Yes, sir.

Q. And you, as cashier of the bank, at that time had occasion to loan him money? A. Yes, sir.

Q. And to investigate his credit and his personal

(Testimony of James F. Lane.)

and financial responsibility?

A. I did. [775—724]

Q. And discuss it with your Board of Directors?

A. Yes, sir.

Q. And with the other people in the bank?

A. Yes, sir.

Q. In that same connection you came in contact with some of his business associates, people with whom he did business, at least? A. Yes, sir.

Q. Do you know what his reputation in this community is for honesty and integrity?

Mr. ALLEN.—That is Corder?

Q. Mr. Corder? A. I do, yes, sir.

Q. What is it? A. Very good.

On cross-examination by Mr. ALLEN, the said witness testified as follows:

Q. Mr. Lane, your conversation in regard to Mr. Corder was confined to comments made to your Board of Directors, did I understand you to say?

A. I don't understand the question.

Q. Your conversations in regard to Mr. Corder were with the members of your own bank, the trustees of your own bank, did I understand you to say?

A. Largely so; yes.

Q. You have never made any more inquiry in regard to Mr. Corder than you have in regard to the probable two thousand depositors you have in your bank, have you?

A. Yes, more so, because he was a borrower, while the two thousand probably were not all of them.

[776—725]

(Testimony of James F. Lane.)

Q. No more inquiry than you would make in the case of any man who borrowed money from you?

A. That is true.

Q. Just about the same? A. I think so.

Q. You would very cheerfully make the same statement, probably, in regard to practically every man who borrowed money from the bank, during that same period of time?

A. We wouldn't loan them the money unless we thought their reputation was good and standing O. K.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I would like to ask you a question, do you know Mr. Goldberg, Mr. Lane? A. Yes, sir.

Q. And how long please, have you known him?

A. Some five or six years, maybe more.

Q. Has he had dealings with your bank?

A. Yes, we have had business relations with Mr. Goldberg and the company.

Q. He has been an endorser, has he not, on notes in your bank? A. Yes, sir.

Q. You had frequent opportunities of observing him in financial matters, have you? A. Yes, sir.

Q. Do you know his general reputation for the qualities of honesty and integrity, during that particular length of time? A. Yes, sir. [777—726]

Q. Would you consider it good or bad?

A. Good.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Lane, with whom did you ever discuss the

(Testimony of James F. Lane.)

question of the integrity or probity of the defendant, Goldberg.

A. On one occasion with the officers of the National Bank of Commerce.

Q. With the officers of the National Bank of Commerce? A. Mr. Stacy.

Q. He was keeping an account down with you and also up at the other place, was he?

A. At that time he kept, maintained the account of the Great Western Smelting & Refining Company, I think, with the National Bank of Commerce. The account of the Great Western Lumber Company, of which he was President and principal stockholder, was with our bank.

Q. He kept his personal account, didn't he, for the time, down in your bank?

A. I am not sure of that. I think not.

Q. Did he keep, and does he keep to-day, an account in your bank? A. I believe not.

Q. Or did he for a long period of years?

A. For the Great Western Lumber Company.

Q. With whatever person, outside of some friend of yours in the bank, did you ever discuss the question of the general reputation of this man, for honesty or integrity, anything of that sort?

A. No one I know of. There was no occasion to.
[778—727]

Q. Your cheerful testimony here before this jury, as to the general reputation of the man, in the community in which he lives, is based upon a conversation of some years ago, with some officer in another bank,

(Testimony of James F. Lane.)

and talk among yourselves down there in your own institution, is that right? A. Not by any means.

Q. I understood you to say so?

A. That is a basis for part of my confidence in Mr. Goldberg. He has been my neighbor, lived near me several years. I have known him personally.

Q. How long did he live next to you?

A. About four or five years, I guess, probably four years.

Q. And Mr. Goldberg is charged with a crime here, and you are very glad to come up and help him out of trouble, isn't that true?

A. I would be very glad to testify for Mr. Goldberg, as I know him.

Q. He has never put in, so far as your personal acquaintance with him goes, he has never put in duplicitous or two bids to the United States Government, has he, for contracts? A. Not at all.

Q. You never had that experience with him, have you? A. No, sir.

Q. You never came in contact with him in reference to the complaint of Mrs. Rubenstein, in regard to her estate, did you? A. I know nothing of it.

Mr. SCHLESINGER.—I object to that and charge misconduct, knowing misconduct upon the part of counsel in the repetition of that question.

Q. Your testimony in regard to this man, then, is based upon your own experience with him, the fact he paid his obligation at your [779—728] bank, and the fact that, living next to him as a neighbor, you never came in contact with any wrongdoing of

(Testimony of James F. Lane.)

his, isn't that right? A. Largely so, yes, sir.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Mr. Lane, you pretty well know the borrowing customers of your bank, do you not?

A. I think so.

Q. You know whether they are worthy of credit, or otherwise, do you not? A. I think so.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. The fact that you loan a man money and he pays it, that is sometimes done by men who are not honest, isn't that true—many men who borrow money from your bank, and return the money, are not honest, isn't that true?

A. I don't think so; no, sir. I think the contrary is true.

Q. Don't you know that is true in life, generally?

A. There are exceptions to all rules.

Q. That lots of crooks, for the purpose of safety, will pay their obligations in many cases, don't you know that to be true?

A. No, I don't know that to be true, but from personal observation.

Q. You have had lots of personal observation of men who didn't pay their notes in your bank?

A. They were honest, sometimes, too.

Q. Wouldn't you reason, in that way, in many cases dishonest men do [780—729] pay their notes at your bank? A. I presume that is true.

[**Testimony of Milton E. Damm, for Defendants.**]

MILTON E. DAMM, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. MORRIS.

Q. State your name. A. Milton E. Damm.

Q. You are the son of A. S. Damm?

A. Yes, sir.

Q. A. S. Damm is now deceased, is he?

A. Yes, sir.

Q. When did A. S. Damm die?

A. July 17, 1911.

Q. In this city?

A. En route east; he was on his way east.

Q. Previous to the time of his death, he was a resident of Seattle, was he? A. Yes, sir.

Q. Actively engaged in business in this city?

A. Yes, sir.

Q. And at the present time are you settling up your father's estate? A. Yes, sir.

Q. You have been delegated by the Governor of this State as State's Representative to the National Conservation Convention, which convenes in Washington City? [781—730]

A. Yes, sir; this month.

Q. And you leave for the east to-day?

A. To-night.

Mr. ALLEN.—I object to all this matter. I don't see how it is relevant.

By the COURT.—Proceed. I presume counsel

(Testimony of Milton E. Damm.)

are about through with it.

Mr. MORRIS.—I maintain the question is proper in every respect.

Q. Are you acquainted with the defendant, Ed. M. Meyer? A. Yes, sir.

Q. About when did you become acquainted with the defendant?

A. When I entered the Government service in 1908, spring.

Q. Where?

A. Navy Yard, Puget Sound, Washington.

Q. At Bremerton? A. Yes, sir.

Q. Was Mr. Meyer at said time in the employ of the Navy Department? A. Yes, sir.

Q. Of the Navy, at Bremerton? A. Yes, sir.

Q. And what was his relation, if any, to you, during the time—at the time that you entered the employ of the Storekeeper's Office at the navy yard?

A. I was his assistant.

Q. You were his assistant? A. Yes, sir.

Q. And what was the relationship, how close were you associated together in the office, physically—were you far apart or close together, as far as your desks—

A. About three feet apart. We faced each other.
[782—731]

Q. And you worked in the Storekeeper's Department of the navy yard, for how many months, under Mr. Meyer? A. About four years.

Q. Did you continue in the employ of the Government after Mr. Meyer left the employ of the Store-

(Testimony of Milton E. Damm.)

keeper's Department? A. Yes, sir.

Q. During the time that you were working with Mr. Meyer, did you become acquainted with Mr. Meyer's associates at the Puget Sound navy yard?

A. Yes, sir.

Q. Are you able to state, from your acquaintance with the persons with whom Mr. Meyer associated, whether or not you know Mr. Meyer's general reputation? A. Yes, sir.

Q. During the time that you associated with him, for truth and veracity, honesty and straightforward business dealings? A. Yes, sir.

Q. Was that reputation good, or was it bad?

A. Very good, sir.

Q. Do you know, do you remember a trial through which this defendant passed in this Court about a year ago?

Mr. ALLEN.—I object to that.

By the COURT.—He may answer.

A. Yes, sir.

Q. Do you know in whose employ Mr. Meyer is at the present time, and in whose employ he has been during the greater part of the time since said trial?

A. Yes, sir.

Q. In whose? A. My employ, sir. [783—732]

Q. I now direct your attention to Plaintiff's Exhibit "61" in case 2042, being the case in which the defendant was tried in this court about a year ago, and I call your attention especially to this photographic copy of a note. Just take a look at it, will you please?

(Testimony of Milton E. Damm.)

Mr. ALLEN.—Is it a note or a check?

Mr. MORRIS.—A check. Excuse me, I meant check.

Q. You needn't state what it is. Do you know what the paper or the exhibit which I have just handed you is? Don't say what it is, do you know what it is? A. Yes, sir.

By the COURT.—What is the number of it?

Mr. MORRIS.—It is Plaintiff's Exhibit "21" in cause 2042. It hasn't an exhibit number in this case yet. You have no objection to its being introduced in evidence?

By the COURT.—Let it be marked.

(Whereupon said check was offered in evidence and marked Defendant's Exhibit A-99, for Identification.)

Mr. ALLEN.—Do I understand he is offering it at this time?

By the COURT.—This is the identified exhibit No. A-99 in this cause, and the offer at this time is denied. You will have the opportunity of reoffering it, if occasion arises.

Q. Again directing your attention to Defendant's Exhibit A-99 for identification, I will ask you to examine the note, or the photographic copy of the check attached thereto, and state to the jury, if you can, in whose handwriting the endorsement, "Priest Rapids Fruit & Land Company, by A. S. Damm, Manager," is? A. My father

(Testimony of Milton E. Damm.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Damm, you were a Government employee beginning at what time, [784—733] what year?

A. April, 1908.

Q. Your relations with the defendant, Meyer, were physically quite close, as I understand it?

A. Yes, sir.

Q. Socially they were so close that during a period of some two or three years, you, during that period of time, nearly every day went to lunch and had lunch with Mr. Meyer, were they not?

A. About four of us, yes, sir.

Q. You were a member of the party with Mr. Meyer?

Q. And after Meyer was arrested, and left the navy yard, he went to work with the land company in which you and he are both interested, isn't that true? A. No, sir.

Q. He is not interested in it? Weren't you both interested in this Priest Rapids concern, referred to here in this check shown you by counsel?

A. He had nothing to do with it, sir.

Q. He never had anything to do with it?

A. No, sir.

Q. Didn't he, as a matter of fact, own at least one share of stock in that company? A. No, sir.

Q. Is that a fact, or not?

A. The stock is made out to him, but it has never been paid for.

Q. You don't know whether there is any corre-

(Testimony of Milton E. Damm.)

spondence, then, between Mr. Kettlewell and Mr. Meyer, in reference to his investing in land there in that locality, do you?

Mr. MORRIS.—I object to that on the ground it is not proper cross-examination. [785—734]

Q. Do you understand the question?

A. Yes, sir.

Mr. MORRIS.—It is irrelevant and immaterial.

By the COURT.—He can answer that yes or no.

OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I have never seen any correspondence.

Q. I asked you whether you knew—not whether you had seen any—whether you knew of any correspondence? A. No, I don't.

Mr. MORRIS.—I move your Honor at this time to strike from the record the question and answer of the District Attorney, and ask that this jury be instructed not to consider it.

By the COURT.—**MOTION DENIED: EXCEPTION ALLOWED.** The jury will be instructed not to draw any inference from the answer or the question.

Q. So during the time you spent in the Government employ, at Bremerton, during several years you were close enough to Meyer socially that you had lunch with him nearly every day, in company with other persons, or with yourself, during that period of time; is that true?

A. There is one place we all patronized; yes, sir.

Q. Meyer and yourself, and, sometimes one or two

(Testimony of Milton E. Damm.)

others, would go over to that place for lunch; is that right? A. Yes, sir.

Q. And after Meyer left the employ of the Government, as you expressed it, you thought so highly of Mr. Meyer, personally, that you have taken him, you say, into your employ? A. Yes, sir.

Q. What concern is that now?

A. Priest Rapids Land Owners' Association.

[786—735]

Q. Priest Rapids Land Owners Association?

A. Yes, sir.

Q. Where are you operating?

A. I don't know whether you call it operating or not. My offices are here in Seattle.

Q. Where is your land, or your company's land, located? A. Central Washington.

Q. Is it near Priest Rapids? A. Yes, sir.

Q. What is Mr. Meyer's connection with the company?

A. Mr. Meyers is my secretary and confidential man.

Q. Your secretary? A. Yes, sir.

Q. And what is your position in the company?

A. I am Vice-President. It is not a company, it is an organization, representing the general public.

Q. The Vice-President has a private secretary, is that right? A. Yes, sir.

Q. Has the president a private secretary?

A. No, sir.

Q. Has the secretary of the organization a private secretary? A. He has a stenographer.

(Testimony of Milton E. Damm.)

Q. And Mr. Meyer is your private secretary?

A. Yes, sir.

Q. Isn't it a fact, and don't you know it to be a fact, that Meyer and Kettlewell both have land over in that locality, or are interested in land in that locality? A. Yes, sir, individually.

Q. Individually they have?

A. Yes, sir. [787—736]

Q. Don't you know it to be true, that you and Kettlewell were all—not together in the same transaction—were all interested in getting land over there about this year 1908, isn't that true?

A. I don't remember just exactly whether it was 1908 or not.

Q. But it was along about that time?

A. Yes, sir.

Q. You were all going into land deals over in the Priest Rapids country, isn't that true?

A. Not land deals, just one or two.

Q. Just one or two deals? A. Yes, sir.

Q. But you all were close enough together at that time, that you were considering mutual transactions, or transactions in which you were mutually interested, in 1908 or 1909, isn't that true?

A. Yes, sir.

On redirect examination by Mr. MORRIS the said witness testified as follows:

Q. The transaction to which you refer, was the fact that Mr. Kettlewell bought from A. S. Damm certain land, that was the property of the Priest Rapids Fruit & Land Company? A. Yes, sir.

(Testimony of Milton E. Damm.)

Q. And he gave, in payment for the purchase of that land, that he himself had contracted to buy, this Lyman Evans check for \$1012.77?

A. Yes, sir.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. I will ask you to identify this instrument, if you can? [788—737]

A. Those signatures upon it?

Q. Whose signature is the top signature down there? A. My signature.

Q. Whose signature is the next one?

A. My brother.

Q. Whose is the next signature?

A. Mr. Meyer.

(Whereupon said letter and envelope are marked Plaintiff's Exhibit 83 for Identification.)

Mr. ALLEN.—We offer that in evidence.

Mr. MORRIS.—We object to it on the ground it is not proper cross-examination, and second, it is irrelevant and immaterial. Third, if the Government wants to go into it, we will go into it fully and try another issue out in this proceeding, that was tried out in another one, in 2042, and it would be a pleasure for us if we were able to do it before this jury.

By the COURT.—The offer at this time is denied. It may be reoffered sometime during the trial, if you find it necessary.

(Testimony of Milton E. Damm.)

On redirect examination by Mr. MORRIS the said witness testified as follows:

Q. Just one question I want to ask you. Mr. Allen asked you if you had attended or accompanied Mr. Meyer, or Mr. Meyer had accompanied you to lunch, on numerous occasions while you were there at Bremerton. I understood you to answer that you had? A. Yes, sir.

Q. Mr. Meyer was the head clerk over yourself, Mr. Cook and some six or eight or nine other gentlemen? A. Yes, sir. [789—738]

Q. And it was your custom, was it not, for some of you, or many of you, on numerous occasions during the week, to go to lunch together?

A. Yes, sir.

Q. And Mr. Meyer was always in your company?

A. Yes, sir.

Q. He was considered just the same as one of you gentlemen? A. Yes, sir.

**[Testimony of James F. Lane, for Defendants
(Recalled).]**

JAMES F. LANE, recalled, testified as follows on behalf of the defendants.

Direct Examination by Mr. SCHLESINGER.

Q. Mr. Lane, I omitted to ask you whether or not you have with you the original deposit slip, showing the deposit in your bank of the sum of Five Hundred dollars, on April 27, 1908? A. Yes, I have.

Q. The one testified to by Mr. Goldberg.

Mr. SCHLESINGER.—We will offer this in evidence.

(Testimony of James F. Lane.)

Mr. ALLEN.—That is the original, is it?

A. Yes, sir.

(Whereupon said deposit slip was introduced in evidence, and marked Defendants' Exhibit A-100, and read to the jury.)

Mr. SCHLESINGER.—That may be withdrawn. We consent it may be withdrawn and we will have a copy substituted.

By the COURT.—Let the record show it is agreed between counsel [790—739] the original exhibit "A-100" may be withdrawn, and a copy supplied for the record.

[Testimony of Louis R. Hardenberg, for Defendants.]

LOUIS R. HARDENBERG, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SCHLESINGER.

Q. State your name.

A. Louis R. Hardenberg.

Q. Where do you live? A. City of Seattle.

Q. How long have you lived here?

A. A little over fourteen years.

Q. What is your vocation, occupation or business?

A. I am Vice-President of the Pacific Coast Condensed Milk Company.

Q. Do you know Mr. Emar Goldberg, one of the defendants here? A. I do.

Q. And how long, please, have you known him?

A. Four years, probably longer.

(Testimony of Louis R. Hardenberg.)

Q. Have you known him lately?

A. In a business way, yes, sir.

Q. You have frequently come in personal contact with him, have you? A. Quite often.

Q. Involving transactions covering verbal contracts and written contracts, as well?

A. Yes, sir. [791—740]

Q. And rather extensive contracts, were they, just generally speaking? A. Yes, sir.

Q. Having known him for that length of time, and in that way, do you know his general reputation in this city for the qualities of honesty and integrity?

A. I would say so.

Q. Is that general reputation good, or do you consider it bad? A. Good.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You stated in your direct examination that you knew him in a business way. That, may I assume, means that it is confined to your experience with him in business transactions, is that right?

A. Yes, sir.

Q. And your testimony, here given, is based upon your own personal experience with him, is that true?

A. I presume so.

Q. With whom did you ever discuss the question of the probity or integrity of Mr. Goldberg?

A. I can't give any names. I have discussed it with other business men in the city.

Q. But you at this time couldn't give the name of any one person with whom you talked?

(Testimony of Louis R. Hardenberg.)

(No answer.)

Q. You say, at this time, you are unable to give the name of any one with whom you might have talked?

A. Yes, and be absolutely positive, I couldn't say.
[792—741]

Q. You couldn't at this time?

Q. You never discussed with anyone the question of his putting in irregular bids to the United States Navy Department, anything of that sort, you never discussed that with anybody? A. No, sir.

[Testimony of L. G. Morris, for Defendants.]

L. G. MORRIS, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SCHLESINGER.

Q. State your name. A. L. G. Morris.

Q. What business are you engaged in?

A. In the transfer business.

Q. With what concern are you connected?

A. Georgetown Reliable Transfer.

Q. You have done a large amount of transfer business, have you not, for the Great Western Smelting & Refining Company? A. Yes, sir.

Q. In Seattle? A. Yes, sir.

Q. Do you know Mr. Emar Goldberg, the manager of the branch? A. Yes, sir.

Q. How long, please, have you known him?

A. About nine years.

Q. Mr. Morris, do you know his general reputa-

(Testimony of L. G. Morris.)

tion in the city of Seattle, for the qualities of honesty and integrity? [793—742] A. Yes, sir.

Q. Do you consider that general reputation good or bad? A. Yes, sir.

Q. What is it? A. Good.

Q. I don't want to embarrass you with a personal question, and if you don't care to answer it, I will take no offense. Have you ever had occasion to temporarily borrow any money from Mr. Goldberg?

A. Yes, sir.

Mr. ALLEN.—I move to strike out the answer.

By the COURT.—The answer is stricken. OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I will ask this question, and submit it to the Court's ruling. Don't answer it until counsel may object. Mr. Morris, have you not, on several occasions, borrowed money from Mr. Goldberg, without Mr. Goldberg exacting from you a promissory note, or an I. O. W.? A. Yes, sir.

Q. How much?

A. Oh, different times, different amounts.

Q. What is the largest of those amounts?

By the COURT.—OBJECTION SUSTAINED, AS TO HIS PERSONAL BUSINESS: EXCEPTION ALLOWED.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You are in the transfer business?

A. Yes, sir.

Q. How long have you been doing Mr. Goldberg's

(Testimony of L. G. Morris.)

business? A. Seven years, I think, next month.

Q. You get quite a bit of business out of the Great Western Smelting [794—743] & Refining Company, don't you? A. Quite a bit; yes, sir.

Q. And you knew him about as intimately, probably, as you do the owners of other businesses, for which you deliver? A. Yes, sir.

Q. And no more so, possibly. Did you ever discuss with any other person the question of the integrity and honesty of this man, Goldberg?

A. No, sir. I speak of Mr. Goldberg just as I know him in everyday life.

Q. That is all, just exactly as your experience with him, that is all? A. Yes, sir.

Q. Confined to your own personal contact with him, in matters that came up? A. Yes, sir.

[Testimony of Frank L. Baker, for Defendants.]

FRANK L. BAKER, a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SCHLESINGER.

Q. State your name. A. Frank L. Baker.

Q. Where do you live? A. Live in Seattle.

Q. How long have you lived in the city of Seattle?

A. Between fifteen and twenty years.

Q. What is your business? [795—744]

A. Foundryman.

Q. What is the name of your foundry?

A. Enterprise Brass Foundry.

Q. Have you a partner in that concern?

A. Two of them. It is a corporation.

(Testimony of Frank L. Baker.)

Q. Do you know Mr. Goldberg? A. I do.

Q. How long, please, have you known him?

A. About ten or eleven years.

Q. Do you know the general reputation of Mr. Goldberg for the qualities of honesty and integrity?

A. I think I do.

Q. Is that general reputation—

Mr. ALLEN.—I object to the answer, on the statement of the witness.

By the COURT.—The answer must be yes or no.

A. Yes, sir.

Q. Is that general reputation good or is it bad?

Mr. ALLEN.—I object to it until he has qualified himself.

Q. Is that general reputation for those qualities good or is it bad?

A. Very good, as far as I know of.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. So far as you know, did you say?

A. Yes, sir.

Q. You didn't state any year or time when you knew his reputation to be good. With whom did you ever talk in regard to the reputation [796—745] of Mr. Goldberg, the defendant, as to his integrity, probity, or anything of that sort?

A. I have talked with Mr. Clark. I think he is vice-president of one of the banks, I don't know just which one it is.

Q. You don't know which one it is?

A. No, sir.

(Testimony of Frank L. Baker.)

Q. You don't know when that conversation took place, do you?

A. I think it was about two years ago, I don't know.

Q. About two years ago. Your impression is based then upon a conversation with some man, who is connected with some bank? A. No, sir.

Q. And upon your personal experience with him, is that right?

A. My experience, through my business, has been one of the ways.

Q. It has been one—

A. Which is based on dealings.

Q. Dealings with your concern and personally with Mr. Goldberg? A. Yes, sir.

Q. In other words, he has never put in any duplicitous contract, in any matter in which you are concerned?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, and again charge willful misconduct on the part of the United States Attorney.

By the COURT.—I think you can get it in other ways.

Q. You have never talked with any official of the United States Navy Department with reference to his conduct or attitude, in the matter of bids, have you? A. No, sir.

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

By the COURT.—OBJECTION OVERRULED:

(Testimony of Frank L. Baker.)

EXCEPTION ALLOWED. [797—746]

Mr. ALLEN.—He has already answered, he has not.

Q. Where is this foundry located?

A. 92 Virginia street.

Q. Three partners there? A. Three of us.

Q. Who is with you?

A. Mr. Eugene Thurlow, Mr. James B. Carmickle.

Q. Did you ever hear Corder say that Goldberg's reputation was good?

A. I don't know. I never spoke to Mr. Corder.

Q. You never did? A. No, sir.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Will you tell me the name of your third cousin, living in Iowa?

By the COURT.—PROCEED.

Mr. SCHLESINGER.—Your Honor understands that all the testimony that will follow, applies to the defendant Goldberg, as well as the defendant Corder, that is testimony coming from any one of the counsel.

**[Testimony of Emar Goldberg, for Defendants
(|Recalled—Cross-examination).]**

EMAR GOLDBERG recalled.

Cross-examination by Mr. ALLEN.

Q. Mr. Goldberg, you stated yesterday in your direct examination [798—747] that Mr. Alper, along in April, April 19, 1908, handed you—gave you this, the beginning of this bonus account was inscribed in your books. Is that right as regarding the date?

A. No, sir.

(Testimony of Emar Goldberg.)

Q. What is the proper date?

A. The proper date is the date when Mr. Alper was here in Seattle.

Q. What is that date?

A. I don't exactly know that date.

Q. You can, by reference to the bonus account itself—

A. The bonus account would not show.

Mr. SCHLESINGER.—Here is the complete bonus account.

Q. This shows a credit of \$5,000 in your ledger on April something, 1908. I don't know—you tell the jury what it is, I don't know.

A. This is not the original sheet.

Q. The original sheet, I think, is in evidence. We will get you the original.

A. It looks like April 23d.

Q. We will look at the original in just a minute. Here is the original. Your judgment confirms mine. That apparently says April 23, 1908.

A. Yes, sir.

Q. That, then, was the date that there was deposited to your credit the sum of \$5,000, or deposited to the credit of the bonus account, Emar Goldberg bonus account?

A. Yes, sir.

Q. In what form did you receive this \$5,000?

A. I didn't receive the \$5,000.

Q. Well—

Mr. SCHLESINGER.—I don't think you quite understand it. It was [799—748] a drawing account.

Q. That is credited to the bonus account?

A. Yes.

Q. It must, as a matter of bookkeeping, have been

(Testimony of Emar Goldberg.)

taken from either your cash account or some other account on your books, or it must have been an actual remittance there somewhere. Where did that \$5,000 come from?

A. I never received \$5,000. There was an agreement that I was to get this money during a period of five years. I considered at that time first how to make the entry so I talked it over with the bookkeeper and decided to credit my bonus account with \$5,000, but as the firm had not spent the \$5,000, at the first time they took inventory, you will notice here that the amount of the money drawn on that bonus account up to the time the inventory was taken, is charged and the balance taken off the books, because the firm could not very well take as a liability, something that it hadn't as yet paid, and might not, because, if I left the firm at any time they would not be obligated to pay me any more than \$5,000.

Q. As a matter of bookkeeping, when you start a new account and give it credit for the sum of \$5,000, you must charge some other account somewhere in the equivalent sum, in order to make the books balance, isn't that right? A. That is true.

Q. Where was this charge entered on the other side of the ledger?

A. Might have been entered to expense; might have been entered to profit and loss; might have been entered to commission account; might have been entered to half a dozen—

Q. Tell me, if your memory will permit you to do

(Testimony of Emar Goldberg.)

so, against what account it was charged, as a matter of fact?

A. I don't recall. I say it might have been entered to any one of [800—749] half a dozen different accounts. It was a credit to me and apparently it was as a journal entry—

Q. What does that word "bonus" mean, Mr. Goldberg?

A. What do you mean, according to Webster's dictionary?

Q. According to the common acceptance in business affairs?

Q. What is the meaning of the word "bonus"?

A. Bonus is, in this particular sense, as put down here, was intended in place of commissions that I had formerly been getting. Up to the first of April, 1908, I had been getting commissions.

Q. I understood you the other day to state that this \$5,000 was given to you so that you could expend it at any time during a period of five years, is that right? A. That is true.

Q. Did you have any five-year written contract with your company?

Mr. SCHLESINGER.—I object to that as incompetent and immaterial, not proper cross-examination. What difference does that make?

By the COURT.—PROCEED. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I have been with the firm fifteen years and never had a written contract.

Q. Yet they placed to your credit, upon the books

(Testimony of Emar Goldberg.)

of their corporation, the sum of \$5,000, which you could withdraw in one day or two days or within five years, is that right?

A. That is true. That simply shows the confidence they had in me.

Q. That shows the confidence they had in you?

A. Yes, sir.

Q. Now, as a matter of fact, down to June 1, 1908, having been placed to your credit April 23, 1908, down to June 1st, following, including those two items \$502 and \$210, tell the jury—figure it out and tell the jury just how much of this \$5,000 disappeared from [801—750] this bonus account?

A. None of it disappeared.

Mr. SCHLESINGER.—I object to that upon the ground that the bonus account speaks for itself.

Q. I want him to explain.

Mr. SCHLESINGER.—I object to it. It speaks for itself. The items explain themselves.

By the COURT.—I think he may answer. **OBJECTION OVERRULED: EXCEPTION ALLOWED.**

A. You want down to June 1st or including June 1st?

Q. June 1st, 1908. A. Including June 1st?

Q. Including June 1st.

A. That is \$1936 up to June 1st.

Q. Then in a period covering seven days, in the month of April, and thirty-one days in the month of May and one day in the month of June, covering that short period of time, nearly \$2,000 of your \$5,000

(Testimony of Emar Goldberg.)

had been drawn from that account?

A. Yes, and I spent a great deal more money than that in the same time, and it went to the same place.

Mr. SCHLESINGER.—There is a typewritten statement, if you care to use it, showing the items received by the Great Western Smelting & Refining Company on the bonus account, and if you can find the relationship, I will buy you a nice hat.

Q. You testified the other day, or rather your counsel stated and you admitted and corroborated it in a way, that the sales of the Great Western Smelting & Refining Company to the United States Government for a year prior to the first of April, 1908, were no more than \$5,000, is that right?

Mr. SCHLESINGER.—I object to that as having been inquired into [802—751] on cross-examination.

Mr. ALLEN.—No, sir, I beg your pardon.

Mr. SCHLESINGER.—Then you should have inquired into it on cross-examination, going over the same ground over and over again.

Mr. ALLEN.—It never was referred to, your Honor.

By the COURT.—I don't assume that this will be extended. Let him answer. OBJECTION OVER-
RULED: EXCEPTION ALLOWED.

A. No, sir, I didn't testify to that fact.

Q. What was the fact then?

A. I testified that our sales through the Navy Pay Office, for that year were about \$5,000.

Q. Do or do not your books show—I will have a

(Testimony of Emar Goldberg.)

sheet here to refresh your recollection—that there was sold, during that period of time, on the books of your company to the United States Navy Yard officials, about \$20,000 worth of material?

A. No, sir. they don't show that there was sold \$20,000 to the Navy Pay Office.

Q. I am not talking about the Navy Pay Office. I am talking about the navy yard in Bremerton, or to the Navy Pay Office.

Q. Complete your answer with the fact or circumstances of that.

A. When I testified yesterday, I testified in reference to the business through the Navy Pay Office. I am well aware of the fact we had done considerable business through the Department at Washington, but no questions were asked to me regarding the business that was done through the office at Washington.

Q. I call your attention to this. Do you identify that as a memorandum from your ledger?

A. Yes, sir.

Mr. ALLEN.—I ask that to be identified.

(Whereupon said memorandum was marked for identification as Government's Exhibit 84.) [803—752]

Mr. ALLEN.—We offer this in evidence.

Mr. SCHLESINGER.—We object to it as being absolutely incompetent, irrelevant and immaterial, and has nothing to do with any of the issues involved in this case, and not proper cross-examination.

(Further argument by counsel.)

By the COURT.—Let it be admitted. OBJEC-

(Testimony of Emar Goldberg.)

TION OVERRULED: EXCEPTION ALLOWED.

Mr. ALLEN.—That statement shows \$20,000 and some odd dollars.

Q. If this—

(Whereupon said statement marked Government's Exhibit 84 for identification was admitted in evidence.)

Q. If this statement shows \$20,613.99, you would say that is right, would you?

A. Very little of that business is through the Navy Pay Office.

Q. That material was all delivered out of your warehouse, or out of your office down here or out of your building and went over to the navy yard here at Bremerton, didn't it? A. Not necessarily.

Q. As a matter of fact, didn't it?

A. Not necessarily. It might have come direct through from the Great Western Smelting & Refining Company, but not necessarily from our warehouse.

Mr. ALLEN.—Without boring you with items, the aggregate amount down to March 21st—

By the COURT.—If you want to read it to the jury, read the whole business.

Mr. SCHLESINGER.—Let them look at it.

Mr. ALLEN.—The aggregate amount is \$20,000.

Q. Then your suggestion made the other day, Mr. Goldberg, was that through Mr. Kettlewell's office, during the period prior to [804—753] April 1st, 1908, you had done simply \$5,000 worth of business?

A. Approximately. I figure out roughly—

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—Per year?

Mr. ALLEN.—In that year. Then beginning April 1st, 1908, in the month of April, May and June, you show sales through that office of \$7,417, do you not? A. That is true.

[Testimony of Edwin F. Meyer, for Defendants.]

EDWIN F. MEYER, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SHIPLEY.

Q. State your name. A. Edwin F. Meyer.

Q. You are one of the defendants in this case?

A. I am.

Q. You are the same Edwin F. Meyer who was jointly indicted with Mr. Kettlewell, one of the Government witnesses, in case 2042 in this court?

A. Yes, sir.

Q. Where do you reside?

A. At 107 21st Avenue North, in this city.

Q. How long have you lived in the State of Washington? A. Since 1902, August.

Q. Where were you born?

A. In South Carolina.

Q. What year? [805—754] A. '77.

Q. How long did you reside in the State of South Carolina?

A. Off and on until in 1902, when I came out here.

Q. During your residence in South Carolina, in what were you engaged?

A. I was connected with the Naval Department

(Testimony of Edwin F. Meyer.)

nearly all of the time after I became of age.

Q. At what point? A. Fort Royal.

Q. At what age did you enter the United States Naval Service, in connection with the Fort Royal Navy Yard? A. About 19, I think.

Q. At the age of 19 years? A. Yes, sir.

Q. Describe to the jury the character of the Navy Yard, and what department therein you were engaged in?

A. I was connected with the Storekeeper's Department and the Paymaster's Department. Fort Royal is a small establishment and the Paymaster who was at the yard was Pay Officer, that is he paid the employees working in the yard, as well as Storekeeper and Purchasing Pay Officer there.

Q. In other words—

A. He occupied the three duties.

Q. That department combined, to a certain extent, the duties of the Pay Office, together with that of General Storekeeper? A. Yes, sir.

Q. And your duties in that department were what?

A. I assisted the Paymaster in paying off the employees, in preparing proposals for the purchase of supplies and in placing the awards; also assisted in the matter of bookkeeping. [806—755]

Q. During what length of time did you perform those duties? A. From 1896 until 1902.

Q. During your service in that capacity, were you ever the subject of censure or complaint for failure to faithfully perform the work that you were en-

(Testimony of Edwin F. Meyer.)

gaged in? A. No, sir.

Q. Describe to the jury how you came to come out here to the coast.

A. Why, I think I made an application—I am sure I made an application for transfer here, and the Navy Department, at the request of Paymaster Morris, who was in charge of the office here, gave me a promotion and a transfer.

Q. Who is Paymaster Morris, in what department?

A. He was Storekeeper and Paymaster of the yard. At that time the Pay Officer here—

Mr. ALLEN.—What yard now are you talking about?

A. Puget Sound. At that time the yard was very small and the Paymaster performed both duties, the Paymaster of the yard and General Storekeeper.

Q. What is in the Puget Sound Navy Yard?

A. Yes, sir, he is Paymaster of the yard as distinguished from the Storekeeper, in that he pays the yard employees and the officials.

Q. And was that transfer in the nature of a promotion, or otherwise? A. Promotion, sir.

Q. What duties were you assigned, upon your being attached to the Puget Sound Navy Yard?

A. I think, when I first came, I was given a little temporary work in the bookkeeping section, and there, shortly thereafter, I was made public bill clerk, that is the preparation of the documents [807—756] that would result in the merchants

(Testimony of Edwin F. Meyer.)

being paid their bills for delivery of material at the yard.

Q. When you first became attached to that department, describe to the jury what the size of the department was, and the number of clerks employed and the general condition of affairs that existed at that time?

A. Prior to the year 1902, the yard was comparatively insignificant, and there were very few employees in the Storekeeper's Department. The force was increased in 1902 by, I think, three or four men. I happened to be one of them. At that time, that particular time, there were two vessels at the yard, one, I think the Wisconsin and another vessel, the Oregon, which increased the work there very materially. After their repairs, and departure, the work again decreased. The yard was comparatively small.

Q. At what period is that of which you are speaking? A. 1902.

Q. That is the year of 1902? A. 1902.

Q. At that time, then, with that increase, how many men did it make in the Storekeeper's Office?

A. There were, clerical force, I think, five or six, maybe, not more, exclusive of the Pay Clerk.

Q. Who was the chief of that department at that time? A. J. A. Kettlewell.

Q. I mean the head, the Paymaster himself?

A. When I first came, Paymaster Charles L. Morris, I think, is his name. Charles Morris, I know.

Q. And next to him was whom?

(Testimony of Edwin F. Meyer.)

A. Kettlewell, J. A. Kettlewell.

Q. That is the Kettlewell who was a witness for the Government in [808—757] this case?

A. He was the chief clerk.

Q. What were his duties at that time?

A. The duties devolving upon the chief clerk generally were the regulation of the force, small at that time, and correspondence in connection with what little work there was in the Storekeeper's Department.

Q. What was your position, in relation to his?

A. Well, I was public bill clerk under him. I acted also under another—

Q. He was your superior? A. Yes, sir.

Q. Now, was it during that period that you said that the Paymaster, who had charge of the Storekeeper, was also dispensing officer, for making payment of salaries to employees in the yard?

A. Yes, sir.

Q. What was the approximate amount of disbursements per month, during that period, through that office?

A. Well, it varied quite a bit; sometimes it was as high as Forty or Fifty Thousand Dollars a pay day—that is semi-monthly—Eighty or One Hundred Thousand Dollars a month, at periods.

Q. Did you have any connection with the making or paying of these disbursements at that time?

A. No, we had a pay clerk, who was in charge of that particular work. I counted the money, put it in envelopes and made the payments to the men.

(Testimony of Edwin F. Meyer.)

Q. That continued during what period of time, about how long?

A. I think up to about 1904. I am not positive about that.

Q. Were there ever any complaints made of the lack of faithful performance of your duties, connected with the disbursement of that [809—758] money? A. No, sir.

Q. Were the accounts of that department, these cash transactions, I mean, and disbursements, audited? A. Very frequently.

Q. How frequently?

A. Well, there would be returns sent to Washington monthly and quarterly and there would be an inspector out every quarter, I think, or six months, not longer than once in six months, for personal examination.

Q. Were there ever any shortages?

A. I know of none, sir; no, sir.

Q. Never any complaints made of any?

A. No, sir.

Q. You were never called upon to make any explanation of any? A. No, sir.

Q. When you came to the Puget Sound Navy Yard, were you a married man or single?

A. Single.

Q. Are you a married man now? A. Yes, sir.

Q. When were you married? A. 1903.

Q. Where? A. In the city here.

Q. Where did you live the first year after your marriage? A. Bremerton.

(Testimony of Edwin F. Meyer.)

Q. Then, for how long following your marriage, did you continue to reside in Bremerton, with your wife?

A. I think it was the fall of 1904. I lived over there about a year [810—759] and a half, maybe November, 1904, I think.

Q. That is you lived there until that time?

A. I lived there, yes, until that time.

Q. Did you buy a home in Bremerton?

A. Yes, sir.

Q. Did you, after the fall of 1904, remove from Bremerton? A. To Seattle, yes, sir.

Q. Where to? A. Why—

Q. Where did you take up your residence?

A. I don't recall, sir. My wife went East to visit her folks. I roomed somewhere, two or three different places, I don't recall just where. At Cedar Street, once, I think, and I had a room down town for awhile, a place on Third Avenue and James, I had a room there for awhile.

Q. Now, you took up your residence then here in Seattle, about when, the first time?

A. About November, 1904, I think it was, sir, in the fall, late in the year, because I remember she went East about November, and I came over here.

Q. When did she return?

A. She returned about 1905, sometime.

Q. And did you take up your residence in the city, or over at Bremerton?

A. Over here. We roomed here until 1906.

Q. Until 1906? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. And where did you live from that time on?

A. I bought a place over here, in 1906.

Q. Whereabouts? [811—760]

A. The place I am now living, 107 Twenty-first Avenue North.

Q. And you occupied that at some what date?

A. It was sometime in September, may have been—I think August or September.

Q. Of what year? A. 1906.

Q. And you continued to live on Twenty-first Avenue from August, 1906, up to what time?

A. In the latter part of September, 1907.

Q. Just describe to the jury what you did at that time.

A. Well, my wife was not feeling very well about that time, and about to be confined. I decided that it required too much time to make the trip to and from Bremerton, that is, I would have to leave home in the morning about 6:30. I was working long hours and I wouldn't return until about seven o'clock. That would take me away from home too much. I decided, in view of her health, to remove her over to Bremerton, where I could be with her most of the time, and along the latter part of September, or the first of October, we occupied Mr. Cook's house at Bremerton.

Q. You mean by Mr. Cook, the gentleman who was on the witness-stand, in this case, the other day?

A. Yes, sir. In that way I could remain at home until about eight o'clock, or half-past eight, and return about five, quite a few hours more.

(Testimony of Edwin F. Meyer.)

Q. Now, before removing from your residence on Twenty-first Avenue, in Seattle, to Bremerton, what arrangement and with whom did you make an arrangement, if any, for the renting of your Seattle place?

A. Why, a neighbor was about to be married, Mr. Walls, who was a witness here, and he made arrangements to occupy my place, beginning [812—761] October 1st.

Q. Of what year? A. Of 1907.

Q. What was done pursuant to that arrangement?

A. Mr. Wells, he occupied it for a year or two years, I think, about.

Q. Commencing when? A. October 1, 1907.

Q. And how long, or when, with reference to October 1st, 1907, did you move over to Bremerton?

A. Well, it was about that time. I vacated the house sometime before October 1st, and took my family right over to Bremerton.

Q. And you moved into the house that you had rented from Mr. Cook, then, did you?

A. Yes, sir.

Q. And, commencing with October 1st, you continued to occupy Mr. Cook's home at Bremerton, for what period of time?

A. Until the latter part of March.

Q. Until the latter part of March? A. Yes.

Q. What year? A. 1908.

Q. During the period from October 1, 1907, to the latter part of March, 1908, were you in the habit of coming over to Seattle, on the late boat, about

(Testimony of Edwin F. Meyer.)

seven in the afternoon, getting your dinner in town, and spending an hour or so thereafter in the office with Mr. Kettlewell, during the months of October, November, December and January? A. No, sir.

Mr. ALLEN.—I object to that as being leading. I wish counsel [813—762] would direct his question in such a way as to ask him what his habits were, without calling his attention to specific hours.

By the COURT.—I think the question is leading.

Mr. MORRIS.—This is a direct contradiction of the statement of Mr. Kettlewell.

By the COURT.—I appreciate that. I think some foundation should be laid, before simply asking the direct question of the witness. Advise the jury of his habits.

Q. Did you hear the testimony of the Government's witness, Kettlewell, that during the months of October, November and December, that you were in the habit of coming to Seattle on the late boat, going to your dinner, and after the dinner hour, meeting him in his office, and spending an hour or so with him? A. I did, sir.

Q. On frequent occasions? A. I did, sir.

Q. State to the jury whether that testimony, or statement, is true, or false.

A. It is absolutely false.

Q. State to the jury, if you can, what the conditions were in your family, and what your actions, were, covering this same period.

Mr. ALLEN.—What period?

Q. October, November, and December, 1907.

(Testimony of Edwin F. Meyer.)

A. During the time we were over at Bremerton, I went over there, as I stated before, for the purpose of being with her most of the time, on account of her illness, and I remained at Bremerton, with very few exceptions, during all the period that we lived over there. There were exceptions, of course, when I would come to Seattle. There was only one late boat. That is, on [814—763] Saturday night there was a boat leaving here at 11:30, but aside from that, there was no boats leaving at all, after half-past four in the evening.

Q. Leaving where?

A. Leaving Seattle for Bremerton, until after half-past four, I think, was the last boat at that time, therefore, for me to be in the city in the evening, I would have to remain all night.

Q. If you had come over on the late boat from Bremerton, to Seattle, then you would have had to remain—

A. Remain in the city all night; yes, sir.

Q. All night, excepting on Saturday night?

A. Saturday evenings.

Q. Did you, during that time, come to Seattle on the afternoon boat, and remain in the city over night, returning to Bremerton the following morning or day?

A. During the entire period, I may have, a few times. I don't—

Mr. ALLEN.—What period is it now you are referring to?

A. We are referring to the period now I lived

(Testimony of Edwin F. Meyer.)

there at Bremerton.

Q. This is confined to October, November, and December? A. From October to March.

Q. The question is October, November and December, I am now interrogating you on?

A. Well, I might extend even until March, but during October, November and December—

Q. The question I am asking you now is whether, during the months of October, November and December, you did, as a fact, come to the city on the afternoon boat, remain in the city all night, returning to Bremerton the following morning?

A. No, sir.

Q. Now, you said that the reason for your remaining at home, was [815—764] the condition of your wife, and expected illness. State to the jury whether there was a child born in the family, at that time. A. There was.

Q. When? A. December 29th.

Q. Who was living neighbor to you and your wife during that period?

A. There were two families, one on either side, a Mrs. Green on one side, and another family that is now in the east somewhere, Robinson.

Q. Was Mrs. Flora Green, who was a witness in this case, one of those neighbors? A. Yes, sir.

Q. During that period?

A. She was there next door.

EDMOND F. MEYER, direct examination (continued) by Mr. *SHIPLEY*.

Q. Mr. Meyer, I believe I asked you in regard to

(Testimony of Edwin F. Meyer.)

your duties in the general storekeeper's office, during the years 1902 and 1903, or about that period. Just state to the jury, in a general way, commencing at that time, the character of the duties that you performed? A. About what time?

Q. Commencing with 1902 and 1903, where we left off. [816—765]

A. In 1902 the storekeeper's office was combined with the paymaster's office, and I performed duties under the two various offices. That is, I assisted in the paying of the yard employees, and also with the general storekeeper's work, such as the making of public bills and bookkeeping, little account of bookkeeping,

Q. This was up to what time?

A. Up until about 1904, I think, or 1905.

Q. Now, from that time on, state what you were, what the duties of your employment were?

A. After the officer were separated, that is, after the storekeeper was ordered to the yard, I became attached to the storekeeper's office, and performed various duties in connection with the storekeeper. I had, I was given charge, I think, of the general outside work, to see that the stores were delivered properly to the various storehouses in the navy yard, and that they were properly cared for.

Q. And these duties brought you in contact with what departments or portions of the Navy Yard?

A. All of the departments, offices and workmen in the navy yard.

Q. Who was Paymaster in charge of your depart-

(Testimony of Edwin F. Meyer.)

ment at that time, in 1904?

A. In 1904 Paymaster D. M. Addison was in charge.

Q. And at that time who was over you as chief clerk in the office? A. Mr. Kettlewell.

Q. And your duties, in charge of this general outside work, continued for how long?

A. Up until the latter part of 1906. Meanwhile Paymaster Addison was relieved by another pay officer, who was in turn relieved [817—766] by Paymaster Brooks, and Paymaster Brooks was in charge of the office when Mr. Kettlewell was transferred to the purchasing pay office in the city here.

Q. What date?

A. I believe it was about December 1, 1906; I think that is the correct date.

Q. And Paymaster Brooks, you say, was in charge at that time, of the office of general storekeeper?

A. Of the office at that time, yes, sir.

Q. And when Mr. Kettlewell was transferred from the Navy Yard at Bremerton to the Paymaster's office of the Navy Pay Office in Seattle, what change was made in your duties, if any?

A. I was promoted to principal clerkship of the office, after Mr. Kettlewell's transfer, and assumed the duties of chief clerk, in addition to the other duties.

Q. Now, this was in December, 1906?

A. December 1, I think he was transferred, in 1906.

Q. And from that time on, explain to the jury what your duties consisted of?

(Testimony of Edwin F. Meyer.)

A. Well, prior to Mr. Kettlewell's departure, I had charge of the clothing and small stores of the navy yard, and the provisions—that is, the storekeeper is charged with keeping on hand a certain amount of clothing and small stores for issue to the vessels and sailors in the Navy Yard, and he also is charged with keeping on hand a small quantity—it was at that time a small quantity of provisions, for the few ships that we had in this vicinity.

Q. What do you mean by the expression “had charge of keeping on hand,” just explain that to the jury.

A. Well, the storekeeper—I think in what the name implies, one who is charged with the keeping and accounting of stores. There [818—767] are five or six different departments in the navy yard, were at that time. There was a Department of Construction and Repair, at the head of which was a Naval Constructor. Department of Engineering, at the head of which was an engineer, and there was the Ordinance Department, Equipment Department and the Yards & Docks Department, at the head of which was a civil engineer.

Mr. ALLEN.—Yards and what?

A. Yards & Docks. These various departments require material in the operation of their work, in the performing of their work, and the storekeeper was a sort of a pivot. At that time these various yard departments would make requisitions in their respective offices, and it would be necessary for that requisition to bear the signature of the storekeeper.

(Testimony of Edwin F. Meyer.)

Those requisitions were forwarded to the storekeeper, who signed them, and forwarded them to the various heads of departments in Washington, who, after approving a purchase of material, would come to the storekeeper again, to be delivered to these various heads of departments, and, as storekeeper, he had under his personal supervision, sort of a personal responsibility, the clothing and small stores, which would be sent to these ships, and the provisions. We didn't keep a very large stock of provisions, because there were no facilities for storing them at the yard. But at that time I had the personal supervision of the clothing and small stores and the provisions; when Mr. Kettlewell was transferred, I took over the work he had been performing, the chief clerkship.

Q. Now, up to that time, in performing your duties, in general oversight of these supplies, that you have mentioned, did you, or did you not, have anything to do with the matter of proper requisitions for the purchase of those supplies? [819—768]

A. Only in a very limited way.

Q. Prior to 1906?

A. The only material that we had anything to do with in that respect, was what was known as naval supply fund stock, and the aggregate amount of stores carried on hand at that time, was simply \$100,000 and we kept that stock up by requisitions, at intervals of about from three to six months, I guess three months, probably, on Washington. In a very limited way, yes.

(Testimony of Edwin F. Meyer.)

Q. That was just to keep up the stock?

A. Yes, the requisitions, yes. Certain articles were agreed upon and carried. For instance, white lead and paint and oils, and a few items of iron and steel, we would endeavor to maintain a small stock of that. The aggregate would not amount to more than \$100,000, it should not have. That was the instruction.

Q. Now, then, as I understand it, up to December 1st, your duties did not call you into as close, intimate connection with the routine in the office, which had to do with the preparation of requisitions, as it did at a subsequent date?

A. General requisitions at that time were prepared in the offices of the respective Yard Departments, under their supervision; simply forwarded to our office for registering and numbering, counting.

Q. In other words, you were sort of a clearing house? A. Purely, yes, sir.

Q. Now, that was the condition that existed up, say, to the first of December, 1906? A. Yes, sir.

Q. From that time on, explain to the jury if there were any changes, and what.

A. Well, the Navy Department rather decided to not limit in [820—769] that way the naval supply fund stock. By that I mean that at the end of the fiscal year, all the material which had been purchased during that year, the previous year, for the various other departments, were grouped into what we call a supply fund, and on July 1st, all that was turned into that naval supply fund, and in that way, we had

(Testimony of Edwin F. Meyer.)

an accumulation of naval supply fund stores from these various departments.

Mr. ALLEN.—July 1, 1907, was this?

A. I don't remember whether it was 1907 or 1906, but it was about that time, but the Yard Departments continued to prepare these open purchase requisitions whenever they wanted supplies, except for certain articles that we tried to keep up.

Q. Now, you say that each of these five departments initiated, prepared and filed with the general storekeeper, the requisitions for their particular needs?

A. Each and every one of them, yes, sir.

Q. That is up to 1906?

Mr. ALLEN.—You understood that question included the element, up to 1906, did you?

A. Yes, sir, and they continued thereafter for some time.

[Testimony of Ralph S. Stacy, for Defendants.]

RALPH S. STACY, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. KERR.

Q. State your full name to the jury, will you please? A. Ralph S. Stacy.

Q. Where do you reside?

A. I live in Tacoma. [821—770]

Q. What is your occupation? A. Banker.

Q. With what banking institution are you connected, and in what manner?

A. National Bank of Tacoma.

Q. What position do you occupy?

(Testimony of Ralph S. Stacy.)

A. President.

Q. You were formerly connected with the National Bank of Commerce in this city? A. Yes, sir.

Q. Also the Bank of California?

A. Yes, sir, with the London, San Francisco.

Q. How long were you connected with the National Bank of Commerce in the city of Seattle?

A. I was with the Washington National and the Commerce for six years.

Q. You were with the Washington National before the consolidation? A. Yes, sir.

Q. Then with the consolidated bank afterwards?

A. Yes, sir.

Q. You are acquainted with Emar Goldberg, one of the defendants in this case? A. Yes, sir.

Q. How long were you acquainted with Mr. Goldberg?

A. As I recollect, between eight and nine years.

Q. Were you acquainted with the Great Western Smelting & Refining Company? A. Yes, sir.

Q. Did that company do business with your bank? [822—771] A. They did.

Q. Mr. Goldberg also? A. Yes, sir.

Q. Were you acquainted, during the years that you knew Mr. Goldberg, with his standing in this community, and his reputation for truth, probity and uprightness of dealing? A. I was.

Q. Will you state to this jury, if you please, whether it was good or bad. A. It was good.

(Testimony of Ralph S. Stacy.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You have not stated on what you base your judgment, as regards Mr. Goldberg. I presume your acquaintance with Mr. Goldberg was that of contact with him as a customer in the bank, is that true?

A. Right.

Q. And such testimony as you have given here, is based upon that acquaintance with him, is that right?

A. Practically so, yes, although I know him somewhat in other ways.

Q. You are testifying, then, that, from your experience, based upon that relation of banker and client, or banker and customer, that was fairly your experience with him; that he was entitled to the beautiful encomium just given him by Mr. Kerr, is that right? A. Yes, sir.

Q. You had how many customers in the National Bank of Commerce, when you left here? [823—772]

A. I don't know; quite a number.

Q. About how many depositors?

A. I couldn't say; several thousand.

Q. And you could make substantially the same observation as regards any one of those several thousand customers, who did the same amount and quantity of business through your institution, as you have just made about Mr. Goldberg, isn't that true?

A. That is hardly true, because the customers with whom I met, were those who borrowed a much smaller proportion.

Q. The customers with whom you came personally

(Testimony of Ralph S. Stacy.)

in contact, generally were those who borrowed money from the institution? A. Yes, sir.

Q. The same observation, practically, could be made of any customer who borrowed money from you, in that time, who did treat your bank fairly and properly? A. Surely.

Q. You don't know anything about his relations towards or with the United States Government, or any of its purchasers over at the navy yard, do you?

A. I don't.

Q. You are confining it simply to your experience with Mr. Goldberg's—experience with him personally and his experience with the National Bank of Commerce, isn't that right? A. Yes, sir.

On redirect examination by Mr. KERR the said witness testified as follows:

Q. I will ask you this further question, in connection with the [824—773] conduct of the bank and business, does it become necessary, in the conduct of that business, for you to familiarize yourself with the general standing of your depositors, men who are borrowing money from you continually, in reference to the probity and uprightness of their dealing?

A. Particularly with the borrowers; yes, sir.

[Testimony of Robert M. Walker, for Defendants.]

ROBERT M. WALKER, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Cross-examination by Mr. KERR.

Q. State your name. A. Robert M. Walker.

Q. You reside in the city of Seattle?

(Testimony of Robert M. Walker.)

A. Yes, sir.

Q. What is your business?

A. I am assistant cashier of the National Bank of Commerce.

Q. How long have you been connected with the National Bank of Commerce?

A. Since 1906, since the time of the consolidation. Previous to that, with the Washington National Bank.

Q. You were with the Washington before they consolidated? A. Yes, sir.

Q. Are you acquainted with the defendant, E. Goldberg? A. Yes, sir.

Q. Has he done business with the National Bank of Commerce, or Washington National Bank, during the time you were connected with that bank? [825—774] A. Yes, sir, he has.

Q. What was the extent of the business, was it constant business? A. I beg your pardon.

Q. What was the extent of his business; was he constantly engaged in business with you?

A. Yes, sir, constantly.

Q. Do you know what the reputation of Mr. Goldberg was, or what reputation he bore during the years you were connected with that bank, in the city of Seattle, for truth, and for probity, honesty and uprightness of dealing?

A. So far as I know, it was good.

Q. Do you know, yes or no, do you know what his reputation was?

By the COURT.—Answer yes or no.

(Testimony of Robert M. Walker.)

Q. Just answer yes or no. A. Yes.

Q. Now, will you state to the jury what it was, good or bad? A. It was good.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You heard the questions propounded by me to Mr. Stacy, who just left the stand, did you not?

A. Yes, sir.

Q. Your observation as regards Mr. Goldberg, is based upon and confined, I assume, to your relations with him as a bank official, during the time he has done business there, is that right? A. Yes, sir.

Q. Your observations regarding Mr. Goldberg have not been [826—775] any more extensive, possibly, than that in the case of any other man, among your thousands of lists of customers, who have done business with the bank, and borrowed money with the bank, and have done the same like quantity of business through the institution, is that true?

A. Yes, sir, that is true.

Q. So that you could say that—make the same answer to Mr. Kerr's questions as regards hundreds of men, who have done and are doing business with your institution now, isn't that true?

A. Yes, sir, that is true. Of course, more so in regard to the borrowers.

Q. I included that as an element? A. Yes, sir.

Q. The ordinary customer of the bank, who doesn't borrow money, ordinarily doesn't come in contact with you, unless you happen to know him, or something of that sort? A. Yes, sir.

(Testimony of Robert M. Walker.)

On redirect examination by Mr. KERR the said witness testified as follows:

Q. In connection with the conduct of the banking business of the National Bank of Commerce, and with the performance of your duties as assistant cashier with the bank, I will ask you to state to the jury whether it became any part of your duty to know, generally, the standing and reputation of Mr. Goldberg, among other like customers in this community, for truth, probity and uprightness of dealing? A. Yes, sir, it was. [827—776]

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. You don't know anything about Mr. Goldberg and his relation towards the United States Government, in the purchase of supplies at Bremerton, do you? A. No, sir, I know nothing about it.

Q. You don't know anything about those matters at all? A. I know nothing whatever.

Q. You don't know anything about the matter of the purchase of the assets of the American Iron & Metal Company by Mr. Goldberg?

**[Testimony of Edwin F. Meyer, for Defendants
(Recalled).]**

EDWIN F. MEYER, direct examination (continued) by Mr. SHIPLEY.

Q. Mr. Meyer, you have stated the character of the work performed by you in your general duties up to the middle of 1906, as I understand it? State to the jury what the conditions were, now, subse-

(Testimony of Edwin F. Meyer.)

quent to June, 1906, in the General Storekeeper's office. A. Subsequent to that time?

Q. Yes, sir, from that time on, any changes that occurred, any subsequent changes, if any?

A. Mr. Kettlewell was transferred from the Navy Yard in December, 1906, and there was that change. I took the duty—the office which had been vacated by him, and the duties he performed. [828—777]

Q. Now, they were what, just state to the jury, now, what you did from that time on?

A. The ordinary duties of chief clerk, that is, attending to the correspondence and the regulation of the office. In addition to that, I had the clothing and small stores and the provisions, I continued to perform. The yard began to grow about that time, increased work generally, and there would be a large number of requisitions which became necessary to be prepared, and I attended to those duties.

Mr. ALLEN.—You say you prepared those?

A. I attended to those. There were assistants in the office, who assisted in the preparation of them, did the physical work, for the most part.

Q. Your position in that office at that time, so we may understand it, was one which required you to supervise, generally, the work and the performance of the duties, by the various subordinates or clerks?

A. Yes, sir.

Q. And when you say the duty fell on you to do a great many of these things, you don't mean to tell the jury you did the actual physical work, and writing, but that you supervised it?

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—I object. It is certainly leading in form.

Mr. SHIPLEY.—I thought we could expedite it in that way.

By the COURT.—When objection is made, of course it is leading.

A. Why, the actual physical work, in most instances, was done by assistants in the office. I had the work of a supervisor, in character, and very frequently did a great deal of the actual physical work, when we were rushed.

Q. Now, then, working under your supervision, you had what clerks, performing what duties?
[829—778]

A. Well, we had what is known as Inspection Call Clerk, clerk in the office who received dealer's bills and the report of the receiver at the navy yard of freight coming in. It was his duty to issue an inspection call, covering that material, and forward that inspection call to the Board of Inspection. We also had in the office what is known as a public bill clerk. It was his duty to receive that inspection call, and when the Board of Inspection made the report, to put it in shape for payment. We had, not part of that office, but in 1906 it was connected with it, a bookkeeping division. It was just a little to the end of the office, in which there were probably two or three bookkeepers, who were recording these various transactions, and we had a messenger, who assisted me in the correspondence work, and I think in 1907, or early part of 1908, we had a man who as-

(Testimony of Edwin F. Meyer.)

sisted me in the preparation of requisitions, that is to do the physical work. The requisition work, about that time, began to grow with the Navy Yard.

Q. Now, up to the late fall of 1907, what was the volume of requisition work, as compared with the year 1908?

A. Well, the volume of requisition work prepared by the general storekeeper, began along about the middle of the year 1907, and it increased a great deal the latter part of that year, and continued from then on to the present date. 1908 it was extremely large, particularly in the early part.

Q. Mr. Meyer, up to the month of December, 1907, to what extent had you had personal knowledge and experience in the matter of preparation of requisitions, making of estimates, etc.?

A. All during my service with the Government, I had a little experience in connection with the forms, etc., but we didn't—as I stated, the Storekeeper didn't—was not called upon to [830—779] prepare requisitions in that way. They were then prepared in the office, in the requisition office of the various yard departments. Along about 1907, that duty devolved upon the storekeeper.

Q. What period in 1907, please?

A. Well, I don't know. I don't recall now. It was subsequent to the time the department ordered all yard stores turned into the naval supply fund, and sometime a year or so later, I think.

Q. Now, you say up to that time, all of these departments of the five component departments of the

(Testimony of Edwin F. Meyer.)

Navy Yard over there, had what they call a requisition office or requisition clerk?

A. Requisition offices and requisition clerk, yes, sir, an office distinct from the Storekeeper's office.

Q. Then, sometime in the latter part of 1907, the requisitions commenced to be prepared more generally in the Storekeeper's office?

A. Storekeeper's office; yes, sir.

Q. From that time on they fell more under your eye—

A. Direction, yes.

Q. Supervision? A. Yes, sir.

Q. About what time was it, to your memory, that Mr. Spear was superseded, the paymaster who was in charge in 1907?

A. I think January 1st or 2d, 1908. It was the early part of the year.

Q. And just describe to the jury the conditions that existed there at that time.

A. Well, the conditions that I described just a short while ago, existed at that time, and it continued until Paymaster Spear arrived and after he arrived, that is with respect to the [831—780] duties I performed.

Q. Those were—

A. That is, he found me there, acting as chief clerk, that is principal clerk, performing the duties of the correspondence man and looking out for the correspondence of the office, the preparation of requisitions for the up-keep of the stock in the yard, as well as the provisions and clothing.

Q. What were the duties of the General Store-

(Testimony of Edwin F. Meyer.)

keeper at that time?

A. Supervisory, the official in charge of the office. He saw that the clerks performed their duties, that is, through me.

Q. You have described, in a general way, the relation that the General Storekeeper's office there bore to the other departments in the yard. Was there any change subsequent to this time?

A. No, sir, condition remained the same.

Q. It continued that way, did it, up to how long, the same general relation?

A. Well, the general conditions remained the same. Paymaster Spear, when he arrived, assumed—that is, the general requisition work was taken over.

Q. What do you mean by that?

A. Well, the up-keep of the stock was taken over more in general, after he arrived. He saw what the requisition office, under the Storekeeper, required for the up-keep of stock, more than prior to that time. I insisted, before his arrival there, on the preparation of a large number of requisitions in the various requisition offices, but, I think, after he arrived, his instructions were that we would up-keep the stock.

Q. And the burden, from that time on, was it thrown upon the [832—781] General Storekeeper's office, in a greater share, that is the keeping of requisitions for supplies?

A. In a far greater share; yes.

Q. What had been the fact, up to that time, in

(Testimony of Edwin F. Meyer.)

regard to large portions of the supplies used by the navy, being drawn from other places of supplies than the Puget Sound?

A. Well, for articles that were required for ships, we did not maintain a very large stock at Puget Sound, and when a ship would require those articles, we would issue them from stock, any articles we had or could supply, and we would return the requisition to the ship and request them to requisition for anything we happened not to have, on the navy yard at *Mayor* Island, which we then considered the basis of supplies for the Pacific Coast. That was likewise true of clothing and provisions. We rarely, if ever, bought any provisions for this store prior to Paymaster Spear's arrival.

Q. State what arrangement or procedure was inaugurated by Mr. Spear, looking to the establishment of this yard as a point to afford supplies?

A. Well, shortly after Paymaster Spear reported for duty, we discussed the matter at length and he decided that he wanted this yard to take its place along with *Mayor* Island in supplying requisitions to ships, and he wanted kept in stock from time to time, articles that were constantly being called for by these ships, by the ships in these waters. He didn't wish to be constantly drawing from *Mayor* Island, and we thereupon began the preparation of numerous requisitions for the building up of our stock at Puget Sound.

Q. And that commenced about what period?

(Testimony of Edwin F. Meyer.)

A. Shortly after he came—February or January.
[833—782]

Q. Of what year? A. 1908.

Q. You spoke of keeping up supplies for ships to be supplies from this navy yard. To what ships did you have reference?

A. The vessels which were in the habit of rendezvousing in these waters, the Pacific Fleet, we call it.

Q. Commencing in the early part of 1908, you commenced to prepare and issue requisitions for the furnishing of supplies for the purpose you have just related to the jury? A. Yes, sir.

Q. I wish you would describe to the jury, now, what you mean by “requisition”; explain the matter fully to the jury.

A. Requisitions, exactly what the term implies; that is “a call.” It is a paper, instrument, I might say, by means of which the officers express their desire for material. Of course, it could—in this instance, material. It might be money or any other thing. We are dealing with material now. There are various kinds of requisitions. There are two general classes, what we call “ships requisitions” and “yard requisitions.” These requisitions emanate in the various departments of the ships and from the navy yard.

Q. What do you mean by “regular requisitions.”

A. What we term over there a “regular requisition,” is a requisition that is not an L, or local requisition. A requisition that went to the Bureau at

(Testimony of Edwin F. Meyer.)

Washington for approval.

Q. That is a regular requisition?

A. Yes, sir. A local requisition was a requisition issued under the authority of an Act of Congress, sometime in 1908, I guess it was, or 1909, limiting the local purchase to \$500. I don't recall just the year that was, it was sometime in 1909, I [834—783] guess.

Q. That came into vogue, did it not, at a later period than the spring of 1908? A. Yes, sir.

Q. Were those what you refer to as the "L requisitions"? A. Yes, sir.

Q. The requisitions which you have referred to as being issued for less than a certain maximum of \$500, were termed what kind of requisitions?

A. Subsequent to that act, it was termed a local requisition, but there was no difference prior to that time. They were all regular requisitions.

Q. The requisitions that were being issued from that office, that is meaning the Storekeeper's office at Bremerton, during the period say from January to June, 1908, were they regular requisitions or what is termed the "L" requisitions?

A. They were the regular requisitions, required the approval of the authorities at Washington.

Q. State to the jury what you mean by that, requisitions having the approval of the authorities at Washington.

A. A requisition emanating in any office, any of the offices in the navy yard, were sent to the Storekeeper. That requisition bore the signature of the

(Testimony of Edwin F. Meyer.)

officer preparing it. It came to the Storekeeper's office, who would register it. The Storekeeper would sign it and it was then forwarded to the respective bureau at Washington, that is the bureau at Washington representing the bureau in the navy yard, and if approved by that, then the Bureau would forward it to the Paymaster General, who would either advertise it, authorize its purchase through the local pay office, or some other pay office, or would order it shipped from some other navy yard to this yard. That is the course the [835—784] regular requisitions took.

Q. Now state to the jury what you mean by advertising, in that sense you have just mentioned.

A. Advertise, in the sense that I have always understood it in the navy, is the process the Bureau at Washington has of asking bids; that is, they prepare printed proposals and send them to the various purchasing pay offices, to be distributed to the various dealers, and would, by the Bureau, be forwarded to these manufacturers and dealers all over the country, and they would insert in the various newspapers, and advertise, calling attention to the fact that bids were being called for at Washington on certain articles, describing, in a measure, the articles called for.

Q. Now, was that a subject that the Storekeeper's office, or any of the clerks in the Storekeeper's office at Bremerton had any connection with or had anything to do with? A. With the advertising?

Q. Yes, these matters you just spoke of?

(Testimony of Edwin F. Meyer.)

A. No, sir.

Q. No authority nor duties to do in connection with it? A. No, sir, nor function or anything else.

Q. Now, in speaking of the Bureau acting upon this matter, and having these bids called for, to what do you refer?

A. The Bureau of supplies and accounts. That is the Paymaster General of the navy.

Q. That Bureau has what relation to the navy yard here in Bremerton?

A. It is the head of the pay and general storekeeping establishment of the navy.

Q. And has jurisdiction over all of the storekeepers throughout the Government service? [836—785]

A. Throughout the service; yes, sir.

Q. That is of the navy? A. Yes, sir.

Q. You spoke of requisitions being prepared by officers in the departments. What do you mean by that?

A. That is the naval constructor, for instance, was in charge of the Construction and Repair Department.

Q. Where?

A. For instance, in the various navy yards, there is a naval constructor, who is at the head of the Construction & Repair Department, the department that looks after the construction and repair of ships. These naval constructors maintain a requisition office in their respective departments, and whenever they wanted any material, and it was not in store, they

(Testimony of Edwin F. Meyer.)

would put in operation the preparation of a requisition for that article.

Q. And this officer bore what rank in the United States Navy?

A. Usually a naval constructor might be a Junior Lieutenant, or Lieutenant or Lieutenant-Commander, may be a Commander.

Q. He was a commissioned officer?

A. He was a commissioned officer in rank.

Q. What other departments were there, now, in which this same process was gone through with in naval construction?

A. At that time, in any one of five departments, the Department of Engineering; Department of Yards & Docks; Department of Ordinances; Department of Equipment.

Q. Designate the date. A. 1908.

Q. During the entire year of 1908?

A. Yes, sir; your questions, I understood, were all directed to [837—786] that particular period.

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants Edwin F. Meyer and Emar Goldberg. Vol. 5, Pages 647 to 786. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [838]

Q. Your reference made here obtains to the Puget Sound Navy Yard at Bremerton? A. Yes, sir.

Q. These different five departments were co-ordinate departments in the navy yard?

A. In the navy yard.

(Testimony of Edwin F. Meyer.)

Q. And each of those departments had, as its head or chief, a commissioned officer of the United States Navy? A. Yes, sir.

Q. Now, when these yard requisitions were prepared from these different departments, and sent to the Storekeeper's, General Storekeeper's office, state how they were prepared, what they would include, how they were made out.

A. Well, the requisition would state the Bureau under which the purchase was to be made, that is, if it was under Construction & Repair, the Bureau of Construction & Repair, it would state the appropriation under which the purchase was to be made, that is the Congressional appropriation. It would give the purpose for which required; it would give the classification of the article, the number or quantity of articles wanted, the estimated cost, the time required, the specifications, and there would be a given number prepared, about seven or eight copies of them, all of those forwarded to the Storekeeper's office for signature.

Q. Now, when these requisitions, with these number of copies, were issued from these different departments, where did they go to?

A. To the Storekeeper's office directly.

Q. And all of the copies were?

A. And after being recorded by him, one copy was returned to the office initiating these requisitions, another was kept in the [839—787] files of the Storekeeper, and four copies forwarded to the Bureau of Supplies and Accounts at Washington.

(Testimony of Edwin F. Meyer.)

Q. At Washington? A. Yes, sir.

Q. Now, when these copies were brought into the General Storekeeper's office, did they fall under your supervision, as the Chief Clerk, or performing the duties of Chief Clerk at that time?

A. Yes, sir; they came to my desk.

Q. Just state to the jury what your duties were with reference to that.

A. Why, I turned them over, as a rule, to the assistant in the office, a man who assisted me in the preparation of requisitions, who would ascertain whether or not the articles were in store, and if they were not in store, he places a little stamp on it, under which he marked that the articles called for are not in store, or due under existing contracts. Then he would give that requisition a number for identification, he would prepare it for the Storekeeper's signature, and would return it to my desk, and from my desk in to the Storekeeper's desk.

Q. What requisition do you refer to there?

A. These requisitions emanating in the offices of the Yard Departments.

Q. They were given a number there then at that time?

A. In the Storekeeper's office. All of the requisitions were numbered in the Storekeeper's office, for identification.

Q. Now, then, in case the supplies called for were in stock, you mean by that "on hand"?

A. Were on hand.

Q. In the charge of the Storekeeper in the ware-

(Testimony of Edwin F. Meyer.)

house? [840—788] A. Yes.

Q. What was done?

A. Well, we called the attention of the officer who initiated that requisition, called his attention to the fact the articles were in store. Frequently he wanted what he requisitioned for, in addition to what we had in store. They were in the habit of investigating our stock prior to the preparation of these requisitions.

Q. In case the articles called for were not in stock, then what was done?

A. The requisitions would be placed in the Storekeeper's desk for signature, and returned, after being signed, to my desk, or to the desk of the party who looked out for the mail to be distributed. These requisitions, a copy of it was detached and sent over to the purchasing pay office yard, a copy sent to the head of the department originating the requisition and the other copies to the Bureau of Supplies and Accounts.

Q. Where? A. Washington, D. C.

Q. What was the purpose of sending the copy to the Bureau of Supplies and Accounts, at Washington, D. C.?

A. No requisition could be acted upon without his approval.

Q. What was the procedure with reference to the requisition that was sent to Washington?

A. The procedure would be to have the technical head of the Bureau at Washington to first approve the requisition.

Q. What do you mean by approving of the requisition?

(Testimony of Edwin F. Meyer.)

tion by the technical head of the department at Washington?

A. Mean that the officer, who was at the head of the Bureau at Washington, would first be called upon to pass upon the requisition, [841—789] upon its necessity, etc., and its form in regard to specifications, etc., and the necessity for the articles.

Q. You refer to a technical officer. What do you mean by that?

A. I mean an officer who was skilled in that particular line of work. For instance, there was a naval constructor at the head of the Bureau of Construction & Repair at Washington, who was an officer who had technical information relative to the construction and repair of ships.

Q. Anything that involved the purchasing of supplies for construction or repair of ships, then, would fall under the supervision of an expert in that line, in the Bureau of Supplies and Accounts in Washington, before the requisition was approved, is that the fact?

A. Under the Bureau of Construction and Repair at Washington.

Q. That is the truth, is it?

A. That is the truth, yes, sir.

Q. Then, if the officer, you refer to as the technical officer of the Bureau, satisfied himself that this was a proper purchase to be made, how did he express that fact?

A. He approved the requisition on the face of it

(Testimony of Edwin F. Meyer.)

and forwarded it to the Bureau of Supplies and Accounts.

Q. And then what would be done in the ordinary course of business?

A. The Bureau of Supplies and Accounts would authorize that the requisition be furnished, if it saw fit. Then they would either be purchased by one of the purchasing pay officers, or shipped to the navy yard, from some other navy yard, or it would be advertised, if there was sufficient time.

Q. Now, suppose that it was to be purchased by the local pay office, then what would be done?
[842—790]

A. It would indicate that on the face of the requisition, to be purchased by the Navy Pay Office or the purchasing pay officer, Seattle, Washington, for instance, and would forward the first and second copies of that requisition to the pay officer.

Q. Now, this requisition, before it went back to Washington, what would it show with reference to the character of the articles to be purchased, estimated cost, time of delivery and things of that kind. Just explain that to the jury.

A. Well, it would show the quantity of material we wanted, a description of the material and the specifications. It would show the unit price each or per pound. It would show an extension of that item or an aggregate amount of the articles.

Q. In order that the jury may understand what you mean by those technical terms, I wish you would describe to the jury just what you mean by each of

(Testimony of Edwin F. Meyer.)

those terms "extension of unit price."

A. For instance, we wanted white lead, we will say. We asked for fifty thousand pounds of white lead. We will describe the package we want it in, 100 pound cases or fifty pound cases or twenty-five pound cases, as the case may be. We will say we estimated it to be worth about eight or ten cents a pound to the unit, because in an extension of that kind—

Q. What do you mean by extension?

A. If it was fifty thousand pounds at ten cents a pound, that would carry the extension \$5,000, and then we would make the requisition in the aggregate \$5,000, and submit it to the officer.

Q. Now, when that requisition reached the Bureau, what purpose was subserved by having the estimated cost and the unit price and the total amount of stock purchased by the requisition?

Q. When the requisition was prepared, was the estimated price placed [843—791] upon all of the copies of the requisition?

A. All copies with the exception of the original ribbon copy.

Q. Why was that?

A. Well, it *was regulation* prescribed, that the estimate be not placed on the original, and on all others. The original bore the signature of the officers. The others did not.

Q. Where does the original remain?

A. The original, after being approved by the various bureaus and officials, the original is attached to the first of the public bills and payment of ma-

(Testimony of Edwin F. Meyer.)

terial, and that lodges finally in the Treasury Department.

Q. The original would show what with reference to the quantity of goods, in regard to the stock to be furnished, what would the original show?

A. The original would show everything that is on any other copy, with the exception of the total estimate, and in addition to that, it would show the signature of the officers.

Q. Now, the other copies which bore the estimate, as I understand, that was not on the original?

A. Not on the original, the only copy it was not on.

Q. The original went into the Treasury Department finally? A. Yes, sir.

Q. Did not bear the estimated cost? A. No, sir.

Q. The other copies, what was done with those?

A. There was one copy in the files of the Storekeeper, a copy in the files of the Bureau of Supplies & Accounts, at Washington, D. C., and in the event the requisition required the approval of the technical head or chief at Washington, one copy lodged in that bureau, a copy with the purchasing pay officer [844—792] making the purchase, and another copy in the Yard Department concerned, if it concerned them.

Q. Under the regulations and the practice followed in the General Storekeeper's office, was or was not the estimated price placed upon these different copies that were lodged at these different offices?

A. All copies, yes, sir.

Q. Now, you have given a statement in detail of the

(Testimony of Edwin F. Meyer.)

procedure with reference to the requisitions which emanated from the different departments in the Puget Sound Navy Yard. You also referred to ship's requisitions. Describe to the jury what you mean by them, and what is the difference between those and the requisitions you have just been describing.

A. Well, these various technical bureaus at Washington, provide an allowance for each department of the ship. There is a department on the ship corresponding to the departments in the navy yard, and the departments in Washington. Those various departments have an allowance for each ship. Whenever an article is wanted to replace an article on the allowance, or for ordinary consumption, they initiate requisitions to replenish those articles.

Q. These ship requisitions would be prepared by whom?

A. In the offices of the heads of departments on board the ship.

Q. And there were two styles of ship requisitions, one known "in excess," and one "not in excess"?

A. Yes, sir.

Q. Describe to the jury what are meant by those.

A. This allowance tax, I just referred to, would express the number of articles, quantity of articles that the ship was allowed [845—793] for a given period, say a period of six months, and at any time, the beginning of the six months, the ship could requisition for their entire allowance. If they consumed all of the allowance in that period, they would have to submit additional requisitions, of course, and

(Testimony of Edwin F. Meyer.)

that would be an "in excess" allowance. Anything allowed for a period of six months, would be called "not in excess."

Q. What would be the difference in the procedure in your office where those two requisitions would come in those two different forms?

A. We are authorized to issue material on a ship's requisition, not in excess of allowance, without the approval of the authorities at Washington, but in the event it is "in excess," it would have to have prior approval by higher authority.

Q. In the event it is in excess? A. In excess, yes.

Q. In either event, whether they were in excess or not in excess, after the Storekeeper was called upon to furnish the material and he didn't have it in stock, what was the procedure? A. At what period?

Q. Well, say in the spring of 1908, from January to May?

A. At that period we would make a requisition for it, either for that quantity or for a quantity for stock, get a larger quantity, and issue to the ship whenever the material was received from stock, that is, if the article was of that nature that we could purchase. There were some articles we obtained by shipment from other navy yards, some articles were manufactured in the navy yard.

Q. If the material was not in stock, and was not manufactured [846—794] in the yard, then would it, or would it not, be purchased just by requisition initiated in your office, the same as other material?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. What is meant by the expression, "request cards"?

A. That is another form of requisition. Just prior to 1908, I don't know just how long, the Bureau prepared a special form of requisition, which we called "Request card." It was used only in the case of articles that we wished purchased after advertisement.

Q. By whom were those request cards made?

A. Only in the office of the Storekeeper, by the requisition clerk, in the requisition office.

Q. Now, either in the case of the ship's requisitions, or these request cards, state what the facts are in regard to advertising.

A. Well, the request cards, almost invariably, resulted in the Bureau advertising the articles, because it wasn't a form on which any article could be purchased. It frequently happened, however, after preparing these request cards, the quantity called for would be small, and the Bureau would prepare a requisition, what we call a Bureau Requisition, that is, a requisition emanating in the Bureau.

Q. Bureau of what?

A. Bureau at Washington, and authorize some pay officer to purchase it. That was a matter within its discretion.

Q. What was the fact in regard to advertising, in the case of goods being required to supply the demand on ships' requisitions?

A. Well, ships' requisitions would lodge in the Storekeeper's [847—795] office. The Storekeeper would, acting upon the authority of the ship's requisition,

(Testimony of Edwin F. Meyer.)

tion, prepare what we call "open purchase requisitions." We didn't prepare request cards for anything of that kind. We prepared open purchase requisitions.

Q. The term "open purchase requisition" appears on many of these folders in this case? A. Yes, sir.

Q. I wish you would describe to the jury what *the* imports.

A. It is a requisition which is prepared in the office of the Storekeeper, or any other office. It shows these various things, the number of articles required, and all of that, and after approval by the approval by the Bureau concerned, it is forwarded to the Purchasing Pay Officer of some Navy Pay Office, and he authorizes what is known as "open purchase" of these articles.

Q. What is meant by "open purchase"?

A. That is purchase after competition, but without advertisement.

Q. That is, without public advertising, which, as you have described, was done under the orders of the Bureau at Washington? A. Yes, sir.

Q. And without advertising, would be, in that case, the call for bids locally?

A. The sending of bids to dealers.

Q. Did that waive competition?

A. No, sir. In fact, unless especially ordered by the Bureau, competition is not waived in any instance of which I am aware.

Q. Now, you have spoken about the preparation of different forms of requisitions in your office, in the

(Testimony of Edwin F. Meyer.)

Storekeeper's [848—796] office at Bremerton.
By whom were those prepared?

A. Well, they were prepared under my supervision.

Q. At what time?

A. Beginning, I presume, 1907, until my separation from the Service.

Q. About what time in 1907?

A. Well, in fact, even prior to that time, and a large number of them beginning about the middle, maybe earlier, part of 1907, middle of 1907 would be more like it, I guess.

Q. Who did the actual physical work on the making of these requisitions?

A. Why, an assistant I had in the office at various times. I prepared some of them myself.

Q. What would be your function in the preparation of those requisitions?

A. To see that the requisitions were prepared and in anticipation of the needs, and that they were in proper form for the General Storekeeper's signature. That is, I indicated the quantity, and saw that the specifications, which were authorized or approved, they were properly inserted.

Q. What do you mean by the preparation of the specifications?

A. Well, there were, in general, the specifications are prepared under these various technical Bureaus at Washington, copies of them printed and sent to the navy yard here. We used those generally.

Q. Now, when you say you mean after preparing

(Testimony of Edwin F. Meyer.)

the specifications, what did you do with reference, say, to a certain article being purchased, in the way of designating under what specifications?

A. Why, all of these specifications, they are given numbers, [849—797] and we refer to the number of that specification, for convenience, rather than the printed specifications. There are times, however, when the specifications are not printed, and we refer to some previous purchase, which was made by some technical officer, and we copy the specifications from a previous purchase.

Q. And, in making your notes for the clerk who did the actual physical calculation of these requisitions, you would designate what, on your notes to him, to be followed?

A. I would indicate, as near as I could, very frequently the quantity. I would indicate the specifications, if they occurred to me, without having to make an investigation of it, or it would be up to him, in that case, to ascertain the specification from which the last purchase was made. He usually had more time than I had, and if the estimated cost occurred to me, that is, if it was known to me, if it was fixed in my mind in any way, shape or form, I would indicate that on it, and very frequently, the time of delivery. Most frequently the time of delivery, because I wouldn't initiate a requisition unless there was some need for it, and the time would be fixed, that would be determined before I would indicate the purchase, that the purchase was necessary.

Q. And from this memorandum, the requisition

(Testimony of Edwin F. Meyer.)

would then be prepared by the clerk, whoever he was, that had the duty of preparing it?

A. Yes, sir, the assistant.

Q. And then what would be done with that requisition, after it came from his desk?

A. It would be returned to my desk. I would observe—see that it was in proper form, the original, for the Storekeeper's signature. [850—798]

Q. And then what would you do with it?

A. I would send it in to the Storekeeper's desk for signature, or take it in.

Q. How often, during the day, would you be called upon, in the ordinary routine of the work, to send requisitions or other papers, in to the General Storekeeper's office, or desk, for signature, during the spring of 1908, I am referring to?

A. We were at the time, during that period, we kept the papers moving all the time. That is, we did not permit them to remain idle on my desk. The office boy or someone there would move them all the time, take them to his desk, he would sign them at intervals when he wasn't engaged in another matter, and this boy kept the papers moving back and forth.

Q. At this time did you have any other duties calling upon your time, and for your observation, than the mere examination of these requisitions that were submitted to you, from the desk of the man who had actually done the work on them?

A. At that time I had innumerable duties.

Q. Just describe to the jury what the facts were at that time.

(Testimony of Edwin F. Meyer.)

A. Well, we had in the harbor at Bremerton a large number of cruisers, calling constantly for material, sending requisitions in to the Storekeeper's office. I had to receive those and attend to the correspondence in connection with them. We had to remember any outstanding contracts to purchase. I had to see that these—that there was correspondence, the correspondence was attended to between the contractors and the storekeeper, and we had considerable correspondence from the Bureau, about these various ships, and the ships were continually drawing clothing and small stores and provisions; those duties.

Q. And to what extent did those various duties impose a tax [851—799] upon your time and energies at that time?

A. Why, I frequently entered the office at eight o'clock, or prior to that time. The office hours begin at nine, as a rule, but we required all hands to work overtime then, and I very frequently remained during lunch hour, and worked until the boat was about to leave in the evening.

Q. We are speaking now of the early part of 1908?

A. Well, the early part of 1908, I didn't leave Bremerton on that boat, but later on I did. I would work until six or half-past six o'clock in the evenings.

Q. And were other clerks kept working overtime, in the same way?

A. Yes, every clerk in the office we worked an hour or two overtime every day.

(Testimony of Edwin F. Meyer.)

Q. Now, why was it, what was the cause of this calling upon the clerks to devote this overtime work, at this particular period?

A. An unusual amount of work, and very few clerks to handle it.

Q. How many clerks were there at that time?

A. I think, when Paymaster Spear came, we had in the office there probably, I think four, four clerks, with the exception of two or three bookkeepers, might have been six or seven. Four clerks in the office, in the requisition office, that is the office which we call the requisition office, which was also the Chief Clerk's office, and there were two or three men in the bookkeeping office, but he increased the force shortly after he came, by two or three temporary men.

Q. When was that?

A. Must have been along about April, March or April sometime.

Q. That was about three months after Paymaster Spear arrived? A. Yes, sir. [852—800]

Q. And when was it that the requisition offices were consolidated under the Storekeeper?

A. Oh, that was after the visit of Secretary Meyer at the Puget Sound Navy Yard, in 1910.

Q. That was way after this time?

A. Yes, this consolidation took place after that time. We got an additional two men from the other yards at that time.

Q. Then, during the entire period of 1908, prior to this consolidation, requisitions continued to come

(Testimony of Edwin F. Meyer.)

into the Storekeeper's office, from the various departments, five in number? A. Yes, sir.

Q. After the consolidation you have spoken of, then the work was managed on a different basis?

A. All requisitions then were prepared in the Storekeeper's office, after the consolidation.

Q. But that condition of affairs did not come into existence until about 1910?

A. About 1910, I think after 1908 a very large—a larger number of requisitions were prepared in the Storekeeper's office than ever before.

Q. When was that?

A. After 1908, we continued to prepare in most instances—

Mr. ALLEN.—You say after. Do you mean including 1908?

A. Yes, included 1908, we continued to prepare, in most instances, the requisitions; but the technical office men would prepare in their respective offices, requisitions, however, for special articles articles that were not in store.

Q. And the reason for this large increase in the preparation of requisitions in the General Storekeeper's office, did that have anything to do with any increased activity in the navy yard, [853—801] about 1908?

A. Due to the presence of the ships there, they were constantly being docked and repaired, they were needing supplies.

Q. Was there any peculiar, extraordinary activity along about the early part of 1908, and there-

(Testimony of Edwin F. Meyer.)

after, in that respect?

A. In 1908 the Pacific Fleet was augmented by three or four large cruisers. What we called the big four, came along about the latter part of 1907 or 1908.

Q. What do you mean by that?

A. Vessels of the type of the "West Virginia," "Maryland," "Tennessee" and "Washington." They, if I remember, came around about that time.

Q. Came from where?

A. Well, from the east coast, they made a cruise around the world, coming the other way, and they added to the fleet that was here at the time, the "Pennsylvania," "Colorado" and "Milwaukee," and oh, a number of other vessels, the "California."

Q. They became part of the Pacific Fleet, did they, upon their arrival?

A. Yes. I don't know whether they actually became a part, but—yes, they were identified with them.

Q. You have identified them in this case?

A. They were called a special cruising trip or something.

Q. Whatever may be the fact in the technical sense, that has been the expression under which they have been designated in this trial?

A. Oh, along about that time we were advised of the coming to this coast of the Atlantic Battleship Fleet.

Q. When was this?

(Testimony of Edwin F. Meyer.)

A. Along 1908, the early part.

Q. During the fall, how early in the fall of 1907, did your [854—802] office in the Navy Yard at Bremerton, commence preparing to supply this Pacific Fleet?

A. Well, we didn't commence in the fall. There were only a few items that we furnished those ships. It was after Paymaster Spear's arrival that we made any attempt to keep in store, articles for these ships. Prior to that time, we would give them only such articles as we had, that would not be called for for the Yard Department, and would forward other requisitions on *Mayor* Island, or return to the ship and ask them to requisition on *Mayor* Island, for *Mayor* Island, at that time, was considered the supply depot for the Pacific Coast.

Q. Now, in the fall of 1907, did there any requisitions reach your yard for furnishing any of this Pacific Squadron?

A. Yes, sir, quite a large number of requisitions.

Q. How many ships comprised the Pacific Squadron, so called, in the early part of 1908?

A. There must have been ten or a dozen in the harbor there.

Q. Were they the following ships, the "Washington," "California," "Colorado," "St. Louis," "Tennessee," "W. Virginia," "Maryland," "Pennsylvania" and "Milwaukee," comprised in that fleet?

A. Yes, sir, I think they all were. Maybe some additional small ones, the "Princeton."

Q. Now, in the preparation of and furnishing of

(Testimony of Edwin F. Meyer.)

these different Pacific ships, what steps were taken in regard to the preparation of requisitions and accumulating of supplies?

A. Well, we began the preparation of requisitions for the purpose of laying in stock of these articles, in order that when the ship would requisition for them, they would be issued from stock. Our effort was—the proper way, to requisition [855—803] for a sufficient number, when we were requisitioning for it, to issue to a number of vessels. We tried to anticipate the requirements of these vessels.

Q. In the preparation of these requisitions, state what was done in regard to providing the estimates, time of delivery and matters of that kind, that were inserted in the requisition.

A. Well, the time of delivery, of course, would be governed chiefly by the need. The ship would indicate on the requisition about when the articles would be wanted, in the case of some of the items, and our requisition would endeavor to carry out—that is, to comply with their requirements. In the case of articles to replenish stock, he would base our time of delivery upon the condition of the stock, and the demand; that is, if the stock was low, he would endeavor to submit a requisition to replenish that stock as quickly as possible.

Q. Refer to the estimates that were placed in this requisition. State to the jury what is meant by that term, in the preparation of the requisition.

A. The estimate is the cost that—the cost of that stuff would be inserted in the requisition. That is,

(Testimony of Edwin F. Meyer.)

it is supposed to be the governing matter relative to the cost of the article. I will explain it this way. These requisitions bore a unit, which is intended to total an aggregate. Whenever these requisitions are approved, it shows an obligation of that amount against the respective appropriation. Congress, in allowing, in appropriating money, will allow so much money, for instance, to the Construction & Repair Department, the amount of that requisition obligated against the Construction & [856—804] Repair appropriation. It is debited and it is credited with any difference that might be, between the purchase, the actual purchase cost and the estimated cost.

Q. And the purpose of inserting the estimate in the requisition, is what?

A. It is for the purpose of keeping—primarily, for the purpose of keeping a record of the Bureau Appropriations.

Q. And for whose information?

A. The Accounting Department of the Government at Washington.

Q. Where? A. Washington.

Q. In other words, it is to keep the Bureau of Supplies & Accounts advised as to what you are approving to the yard in the matter of purchase?

A. As to its obligations; yes, sir.

Q. By whom were these estimates made?

A. By the party preparing the requisitions. If the requisitions were made in the Yard Departments, they are made by someone in connection with that

(Testimony of Edwin F. Meyer.)

department. If they are made in the Storekeeper's office, by someone connected with the Storekeeper's office.

Q. What do you mean by Yard Department?

A. These technical yard departments.

Q. In other words, the requisitions that came from the Naval Constructor, or the Engineer, official of some of these co-ordinate branches of the yard, would bear upon their face—

A. The requisitions would be complete in detail, with the exception of the Storekeeper's signature. It would show all of the information that it would show if it had been prepared by the Storekeeper.

[857—805]

Q. In each of these cases, that estimate was inserted there, so the Bureau at Washington could keep a check on the demands that were being made upon the appropriation for the use of that particular department?

A. Yes, sir, an idea of what it was approving.

By Mr. ALLEN.—You mean an estimate was placed upon the requisition in your office?

A. In the department in every instance.

[**Testimony of R. E. Downey, for Defendants.**]

R. E. DOWNEY, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. MORRIS.

Q. State your full name. A. R. E. Downey.

Q. How long have you lived in the city of Seattle?

A. A trifle more than eighteen years.

(Testimony of R. E. Downey.)

Q. During your residence in this city, have you been connected with the Government in any capacity?

A. I was in the Government service and employ of the Navy Department, for a little more than six years.

Q. In what capacity connected with the Navy Department?

A. My first appointment, on September 15, 1900, I was appointed a clerk in the Commandant's office at the Puget Sound Navy Yard.

Q. And from the Commandant's office in the Puget Sound Navy Yard, [858—806] you went to what position in connection with the navy?

A. The following March, 1901, I was transferred as chief clerk to the superintendent constructor at Moran Brothers Company, who had charge of the building of the Battleship No. 14, the "Nebraska."

Q. And you were connected with the Government in the construction of the "Nebraska," for how long?

Q. I remained there from March, 1901, until May, 1903, as I recall it, when I was made chief clerk in the United States Navy Pay Office, in this city.

Q. And you remained as chief clerk in the Navy Pay Office in Seattle, up to what time?

A. The 30th day of November, 1906, my resignation took effect.

Q. Are you acquainted with the defendant, Edwin F. Meyer? A. I am.

Q. Were you acquainted with Mr. Meyer during

(Testimony of R. E. Downey.)

the time he was connected with the Navy Department, with the Storekeeper's branch of the Navy Department, at Bremerton, up to the time of his arrest? A. Yes, sir, I was.

Q. Were you acquainted with the persons with whom the defendant, Meyer, associated at such time? A. I was.

Q. Are you able to state to the jury whether or not you know the defendant's general reputation for truth and veracity, for honesty and straightforward dealings during said time?

Mr. ALLEN.—Where, here?

Q. Puget Sound Navy Yard?

Mr. ALLEN.—Over there or over here?

Mr. MORRIS.—Listen to the question. I don't like to be [859—807] interrupted.

A. I know the man's reputation very well.

Q. For the subjects I mentioned to you?

A. Yes, sir.

Q. Is his reputation good or bad?

A. His reputation is good.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You have been a long time friend and acquaintance of Mr. Meyer, haven't you?

A. I think that is correct.

Q. You think it is correct? A. Yes, sir.

Q. Aren't you as positive of that fact as you are the matters you have testified to?

A. The *state* will go without the word "think." It is correct.

(Testimony of R. E. Downey.)

Q. You are basing your statement of his general reputation upon your personal experience with him; is that true? A. Partially true, not altogether.

Q. With whom, in the city of Seattle, for instance, have you ever discussed the question of the probity and integrity of Mr. Meyer, in your effort to ascertain from other men what the general opinion in regard to his honesty was?

Q. With whom did you talk—read him the question and supply the word “Bremerton”?

(Question read.)

A. I talked, I presume, with every officer at different times at the Puget Sound Navy Yard, during the period of two or three years, and I have heard numerous officers— [860—808]

Q. You name them. Don't give general conversation, to whom have you talked? Did you ever talk to Paymaster Spear, sitting there?

A. No, Paymaster Spear was not in the service while I was there.

Q. To whom did you talk, then?

A. The Paymaster at the yard at the time that I have in mind was Paymaster Insley and Paymaster Brooks.

Q. Did you talk with each one of those men?

A. I have had conversations with every one of those men, and I know what they all thought of Mr. Meyer.

Q. Paymaster Insley?

A. Paymaster Insley, who is not now in the service.

Q. Who is this other man? Tell me one who is in

(Testimony of R. E. Downey.)

the service. A. Paymaster Brooks.

Q. Where is he?

A. The last I heard, he was at Indian Head, Maryland. I don't know where he is now. The Government might shift him any day.

Q. In regard to the integrity or honesty of different men in the employ of the Government, did you ever discuss with these men? A. I don't know, sir.

Q. Did you ever discuss with any officer of the navy yard, regarding the personal integrity of any other person other than Mr. Meyer?

A. I don't recall whether I had any particular conversation, in which I endeavored to find out about anybody especially. I don't know that I did.

Q. You recall vividly that your friend Meyer was discussed, do you?

A. I recall perfectly; I have talked with many of those men, [861—809] and I know the general reputation of Mr. Meyer with these men.

Q. Isn't it a fact Paymaster Insley was fired from the Government service for fraud?

Mr. MORRIS.—I object as incompetent, irrelevant and immaterial.

By the COURT.—He may answer the question. OBJECTION OVERRULED. EXCEPTION ALLOWED.

A. I don't know absolutely whether he was fired or resigned. I understood he resigned to keep from being court-martialed, but I don't know whether that is technically correct.

(Testimony of R. E. Downey.)

On redirect examination by Mr. MORRIS the said witness testified as follows:

Q. You stated you were a friend of Mr. Meyer's. Why are you a friend of Mr. Meyer's?

Mr. ALLEN.—I object as not being proper.

By the COURT.—He may answer the question.

A. Well, I am a friend of his,—in the first place I admire the man, because of his unusual efficiency. I never talked with him but what I learned something, and he is naturally an affable man, and I confess I had a personal liking for him; that is all.

Q. That feeling exists to-day the same as it did the time he was in the Puget Sound Storekeeper's office?

A. I am still a friend of Mr. Meyer's.

**[Testimony of Edwin F. Meyer, for Defendants
(Recalled).]**

EDWIN F. MEYER, direct examination (resumed) by Mr. SHIPLEY.

Q. Mr. Meyer, in answering the last preceeding question, you [862—810] stated what the primary purpose of the estimate was, using your language. What other purpose, if any, than that you have mentioned, did the estimates subserve?

A. The estimate served to limit the purchasing pay officer, in the purchase of supplies. That is, it has been always held as a rule, I believe they say it is a statutory provision, that the estimate should not be exceeded by these officers more than ten per cent. In other words, the Navy Department at Washington knows at all times that its requisition, approved, will

(Testimony of Edwin F. Meyer.)

not be exceeded more than ten per cent. That is the secondary matters.

Q. The estimate placed upon the requisition, did or did it not have any control over the Navy Pay Office, as to the minimum at which the article desired could be purchased?

A. Absolutely none, sir. The purchasing pay officer was the authority on that. He sent our proposals, and he certified in each instance that the purchase was made, after competition, to the lowest bidder. The estimate has nothing to do with it whatever. He could not exceed that estimate, however, more than ten per cent.

Q. It was his duty to purchase it as much below that as he could? A. Those are the regulations.

Q. As the market would permit?

A. —the law on the matter.

Q. Upon what was the estimate based?

A. We based the estimate on requisitions upon previous purchases, frequently upon information furnished by contractors, dealers in Seattle or elsewhere, upon information furnished us by the technical heads in the navy yard, or by the ships. When we have time to investigate, we usually go to [863—811] the contractor, or make an inquiry ourselves, as to the estimate, sometimes from catalogues in the office, but a catalogue is a very uncertain thing. We rarely, if ever, refer to them in making an estimate, because the people who publish these catalogues frequently had a list upon which there is a discount of fifty to one hundred per cent or more.

(Testimony of Edwin F. Meyer.)

Q. Now, did you have an accumulation of catalogues in the Storekeeper's office?

A. I tried to get a number of catalogues.

Q. I mean, now, referring to the early spring of 1908?

A. I had just a limited number of them.

Q. Who initiated this system of acquiring and accumulating a number of catalogues?

A. After I took over the requisition work, I wrote, at the Storekeeper's direction, to a large number of manufacturers, all over the country, and requested them to send their catalogues to the Storekeeper's office for reference.

Q. You say, after you took over the requisition work?

A. Yes, sir.

Q. Which was when, as to point of time?

A. In the fall of 1908, after Mr. Barnes relieved me of the duties of Chief Clerk.

Q. Then this accumulation of catalogues had not been initiated until after the period of transactions under investigation in this particular case, that is, up to the first of June, 1908?

A. There was a limited number prior to that time, just a few, that we had collected from the requisition offices in the navy yard.

Q. But the substantial accumulation of the catalogues, and especially in that line, occurred subsequent to that time? [864—812]

A. Yes, sir; after 1908.

Q. Was this effort made by you, subsequent to the early spring of 1908, accumulating this stock of catalogues, in furtherance of the effort on your part, to

(Testimony of Edwin F. Meyer.)

acquire knowledge and information to fit you to prepare these requisitions and estimates?

A. Yes, sir; I had all my time then to devote to the requisition work, and endeavored to acquaint myself with that feature of it.

Q. You say you had time, this was after the requisition work was separated from the other work?

A. Yes, sir.

Q. This was after Mr. Barnes had arrived?

A. Yes, sir.

Q. Which would be in the latter part of 1908?

A. Yes, sir.

Q. What was done in regard to acquiring information from dealers, in order to arrive at the fair amount to be inserted as an estimate?

A. Very frequently we would write the dealer, if the time permitted, asking for a quotation on the article, giving him a description, specification and quantity, and ask what it could be delivered at the navy yard for. Frequently, if the time did not permit, we would telephone some known dealer in the city.

Q. And in telephoning or endeavoring to secure this information, were you acting in furtherance of any scheme to defraud the United States Government?

Mr. ALLEN.—Is that a general question?

Q. I mean, now in the early part of 1908, if, in the securing information, if it was done for that purpose?

Mr. ALLEN.—Speaking generally? [865—813]

Q. Yes, sir. A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. State to the jury what difficulty, if any, was experienced in obtaining information for estimates and fixing the estimates.

A. Well, we experienced considerable difficulty at various times. The articles required by the navy included almost every conceivable line of supplies, from anchors, chains, etc., to clothing, provisions, items of hardware, tools of every kind, and we occasionally ran across items that are very difficult to locate. We have considerable difficulty in fixing an estimate on them.

Q. You hold in your hand a folder; what exhibit number?

A. This seems to be exhibit 86 in cause 2040; that is last year.

Q. This hasn't been introduced, evidently, in this case. Examine this. (Showing witness purchase folder requisition No. 7, series 10.)

Mr. MORRIS.—That is the wrong requisition. You want 17, L. '11.

A. Yes.

Q. Do you know what that folder is?

A. This is the purchasing pay office folder for requisition 7, steam engineering.

Q. In order to have it identified we will have it marked.

A. It is for five items for the "Washington" and "Wheeling," ships "Washington" and "Wheeling."

(Whereupon said folder is marked A-101 for identification.)

Mr. SHIPLEY.—On this requisition, it was the

(Testimony of Edwin F. Meyer.)

Storekeeper's folder and not the pay officer's folder that we desired.

Q. Was there any variation in the matter of estimates and cost of articles?

A. Frequently there was a large variation, yes, sir. [866—814]

Q. What was the effect of that on the question of providing estimates, of the variation of the cost?

A. Our rule was invariably to make a liberal estimate on a requisition, in order that the purchasing pay officer may not have to delay the purchase, due to that ten per cent rule, that was in vogue at that time.

Q. Handing you open purchase requisition No. 36, L. Series 1911, I will ask you to state what that is.

A. This is the Storekeeper's folder of a local requisition, naval supply, 36 L., dated August 19, 1910.

Q. That has been offered in evidence, I believe, yet, in this case?

A. No, sir; and it is for three items, brushes, screws and plaster for—

Mr. ALLEN.—He has identified it. Are you going to offer it in evidence at this time?

Mr. SHIPLEY.—Yes, we are going to offer it.

Q. When was this folder produced in Court?

A. To-day, I think.

Q. One that Mr. House has just brought in, is it not? A. Yes, sir.

Mr. ALLEN.—What possible bearing would the folder of August 19, 1910, have?

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—It is for the purpose of illustrating a matter that the witness is now testifying to, as to variation, preparing estimates.

Mr. ALLEN.—Your Honor, I submit that a requisition of August 19, 1910, is too remote in point of time to afford any light to the jury on the question of what might be the condition in 1908. [867—815]

Q. Mr. Meyer, what is the fact, in your experience in the Storekeeper's office, or from your experience in the Storekeeper's office, as to whether or not the estimated prices which was placed in the requisition, was followed by or controlled the paymaster in the Navy Pay Office in Seattle, in the price for which he purchased the article requisitioned for?

A. Why, the regulations—

Q. I am asking now as to what the facts were?

A. The facts were, he purchased them, after competition from the lowest satisfactory bidder, irrespective of the estimated cost of the articles.

Q. And, in acting in the discharge of his duties in purchasing the goods, state whether or not from your knowledge of the transaction, whether or not the goods were, in fact, purchased for the same, or less than the amount, included in the estimate.

A. Goods were invariably purchased for less than the estimate.

Q. Now, can you state to the jury generally about what percentage of variation is shown in the different folders, about how it ran, to what extremes the variation?

Mr. ALLEN.—I object to that as incompetent, ir-

(Testimony of Edwin F. Meyer.)

relevant and immaterial. He has not qualified himself here as a bookkeeping expert.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I wish to hand the witness four Government folders and ask him to state what they are, if he knows?

By the COURT.—Have these been identified?

Mr. SHIPLEY.—Not as yet. We will offer them as one.

A. They are Defendant's Exhibit "Q," "T," "S" and "U."

Mr. MORRIS.—They are in evidence; they are "Q," "T," "S" and "U."

Mr. SHIPLEY.—In evidence in this case? [868—816]

A. In evidence in this case, and they are contracts with Richard B. Sherman, J. B. Kendle Company and Western Hardware & Metal Company, for bolts and nuts.

Q. Now, explain to the jury what bearing those matters have upon the question of variation, which is now under inquiry?

Mr. SHIPLEY.—We at this time offer these four folders, which have been previously identified as Defendant's Exhibits "U," "T," "S" and "Q," as evidence in this case.

(Further argument by counsel.)

By the COURT.—I have my mind fixed that these should be admitted. It is for the jury to say whether there is any, or what weight should be given to these,

(Testimony of Edwin F. Meyer.)

from the testimony that is presented, and I believe it would be error to not permit it, under the testimony as it is before the Court. OBJECTION OVER-
RULED; EXCEPTION ALLOWED.

(Whereupon Defendant's Exhibits "Q," "T," "S" and "U," for Identification, are admitted in evidence.)

Q. Showing the witness Defendant's Exhibit "T," the matters contained in that folder, are they the same as involved in any of these other four?

A. Practically. They are bolts and nuts, standard article.

Q. That folder that you have is separate from this, separate transactions? A. They are separate.

Q. You may proceed and explain to the jury what you mean by variation in price and cost and selling price and estimate.

A. This is a requisition for bolts and nuts, that was sent to the Bureau at Washington, to be advertised. The Bureau, after receipt of that requisition, sent out these printed proposals, advertising the purchase of a number of items of bolts and nuts, [869—817] navy standard. They placed an award subsequent to the receipt of those proposals, for the standard bolts and nuts, at prices varying from four and three-tenths cents, to seven and eight cents, according to the size. Smaller sizes would be eight cents, and larger sizes would be four and three-tenths cents. At the same period we wanted some bolts and nuts at the navy yard for earlier delivery. We have two or three requisitions here—

(Testimony of Edwin F. Meyer.)

Q. I am asking the witness to explain what he meant by the difficulty in arriving at estimates, based upon the variation in prices, which he is doing. His answer is responsive to the question.

A. The first contract, in the Storekeeper's office, we wanted bolts and nuts for delivery at the yard for an exigency, that is, for some of the ships there. We knew that these prices were in existence, four and three-tenths cents, but we wanted local delivery. After telegraphing San Francisco, Portland and dealers in Seattle for prices, that is, writing them a letter and asking them to quote us prices by wire, I was forced to submit a requisition for the same articles, under the same specification and make the estimate fourteen cents, whereas the same material was purchased for in the neighborhood of five and six-tenths cents for eastern delivery.

By a JUROR.—That was a case where you purchased these nuts at fourteen cents a pound, where you have got to have them in Seattle, and you were willing to pay fourteen cents a pound instead of four, in order to get them?

A. In order to get them, yes, sir. The early delivery was the item.

Q. That is a transaction in which there was an exigency and the Government needed the nuts and bought them, paying that price, although they could have been purchased, and had been [870—818] purchased, at a lower price?

A. Yes, but the delivery in this case was 120 days. We couldn't wait that long for the material. The

(Testimony of Edwin F. Meyer.)

ships were there, waiting for the completion of this work.

Q. Was there any charge or question of fraud in connection with that transaction?

A. Not that I am aware of, sir.

Q. Who was the trader or the concern from which that purchase was made?

A. This was the contract, made from Richard B. Sherman. That is a New York concern, but the local purchase was made in one instance from Baker & Hamilton, San Francisco.

Q. The matters you are testifying to are with your personal knowledge?

A. My personal knowledge, yes, sir.

Q. I call your attention to Defendants' Exhibit "Q," I think that is.

A. These all relate to the same thing, bolts and nuts. They are just under the same circumstances.

Q. These four exhibits that have been just offered, relate to the same character of transaction, in regard to the same subject matter of bolts and nuts?

A. Bolts and nuts, yes.

Q. Handing you Plaintiff's Exhibit 69, I will ask you to examine the contents of that folder, and tell the jury what the facts are that are disclosed, bearing on the same subject matter.

A. This isn't the 169 in question. This is 169 of 1907. The other 169 is 2/12/10.

Q. That is the wrong year?

A. Yes, sir. that is the wrong year. [871—819]

Mr. MORRIS.—Mr. House, can you furnish us

(Testimony of Edwin F. Meyer.)

with folder 169, 2d of February, 1910?

Mr. HOUSE.—Did you ask me for it before noon?

A. Yes, sir. They may be introduced here, I don't remember. This pertains to zinc.

Mr. MORRIS.—Those are the folders we called for, are they not?

A. 169, whatever date it is there. This is not the folder we called for. The memorandum there gives the date of the requisition.

Mr. MORRIS.—The 12th of February, 1910, bolts and nuts.

A. Bolts and nuts. That requisition 153 is in evidence, that is it has been introduced.

Q. In the preparation of these specifications, and in the insertion of the estimated price, what were the facts in regard to—say this is the early part of 1908—to your having at hand at that time, data in the office, showing previous purchases?

Mr. ALLEN.—I submit they went over that very carefully. I don't see why it should be repeated at this particular moment.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. Why, at that period, it was exceedingly difficult to trace an article back, except by reference to the bookkeeper's records. We established what we called a card index system, of recording material, after that time, after I took up—

Q. When was that established with reference to April 1, 1908?

A. Not until after I gave most of my attention to

(Testimony of Edwin F. Meyer.)

the requisition work. It was after Mr. Barnes' arrival at the navy yard.

Q. And prior to that time, state to the jury what the facts are in regard to confusion existing there, or not?

A. Well, it was exceedingly difficult to trace an article back, because of the absence of that card index system. The Storekeeper's [872—820] work grew to great proportions, in a very short time, and without clerks, as Mr. Spear said, it was necessary to keep a great deal of this in my head. We hadn't sufficient clerks to keep the record, and it was chiefly done by myself, by notes made at various places.

Q. And that was because of doing a vast amount of business shorthanded?

A. With very few men to do it, yes, sir.

Q. Now, what is meant by the expression, "term of delivery," which has been referred to several times?

A. That is the time of delivery. That is the date that is stated in the requisition that the material would be required. That is the date we would like to have the material.

Q. What determined that fact?

A. The need of the articles, that is the condition of stock, or the request from the ship.

Q. And by whom was the question of time determined, by what person?

A. In case the requisitions were prepared in the yard departments, they were determined by those officers. In case they were prepared in my office,

(Testimony of Edwin F. Meyer.)

they were determined by me or by the Storekeeper, he would direct me to do it. I had some discretion in the matter.

Q. Did the time that was prescribed in the requisition for delivery, was that binding upon the Paymaster?

A. No, sir, not altogether, it was not binding in any way. The purchasing pay officer exercised his discretion. He tried to get the material on time, but if he could not, he would purchase it at the shortest delivery he could.

Q. By whom were the specifications which you mentioned at several [873—821] times, by whom were they prepared?

A. In the Bureau at Washington, or by the technical officers at the navy yard.

Q. Going back to the matter of time of delivery, with reference to the ship's requisitions, how was that determined?

A. Well, a ship requisition would indicate on its face just when the article would be required by the vessel. They were usually in a hurry. We tried to get it for them as soon as possible.

Q. And to what extent, if any, did the condition of the stock in the yard influence the fixing of the time?

A. A very great extent. We would determine by the issues, or the probable issues, just how much of the material would be required, and we would base our requisitions accordingly. If we had plenty of time, we would submit a requisition to the Bureau,

(Testimony of Edwin F. Meyer.)

ask them to advertise—not ask them to, but on such a form that they would advertise it. If they wanted material for early needs, they would issue a requisition and ask the purchase of it in the open market, the idea being to always have the material there when called for.

Q. And to what extent, if any, did the knowledge of future requirements to meet the demands of ships that were expected, influence you in determining the time for delivery?

A. Well, that was the governing feature, the controlling feature.

Q. What do you mean when you say that was the controlling feature?

A. Well, the knowledge that material would be required caused us to put into operation these requisitions, to meet these probable demands.

Q. Now, you say you had to be prepared to meet these future requirements. Did you always act upon absolute information, or [874—822] were you required to anticipate and speculate on the amounts, on both the time and the amount which would be required?

By the COURT.—State on what you did act.

A. Well, the ships made it a habit, they visited the navy yard during the spring and fall, as a rule. Prior to the arrival there of those ships—I am referring particularly to the Pacific Fleet—we endeavored to build up our stock, to have on hand, about the time of their arrivals there, a large quantity of supplies, larger than any other time.

(Testimony of Edwin F. Meyer.)

Q. What period are you referring to?

A. We started this in the spring of 1908, and we requisitioned for material in order to have it there while these ships were there in 1908, and that procedure was carried out up until the time of my separation from the service.

Q. (By Mr. MORRIS.) Don't you mean 1907?

A. No; 1908.

Mr. MORRIS.—You are speaking of battleships?

A. Cruisers.

Q. You say they were expected ordinarily in the fore part of the year?

A. In the fore part of the year; they were over in the fore part of the year 1908.

Q. State what the facts are as to whether they would return at different times throughout the year.

A. They came in the spring, and usually in the fall, and at that period they would submit their semi-annual requisitions. These requisitions were submitted from the various departments, calling for their allowance for supplies.

Q. Allowance for what period?

A. Six months period. [875—823]

Q. And in fixing the time of the delivery, what bearing did the arrival of the ships have on that?

A. Well, we figured about the time they were due there, and we wanted to have the material on hand prior to their arrival, in sufficient time so as to have it inspected and stored, so as to be able to send it to them upon their requisitions.

Q. What, if anything, would have been the result

(Testimony of Edwin F. Meyer.)

of a failure to have it there at that time?

A. I would usually be called to account for it, why the store is not here, or why isn't this item here for the ship.

Q. What effect did that have as to delaying the ships?

A. I know that, yes, sir. Zincs are required for boilers of vessels; they cannot move without them.

(Question read.)

A. Well, there are certain items of ship's allowance that they don't leave the navy yard without, and zinc would be one of them.

Q. By whom are the purchases made under these requisitions? A. The Purchasing Pay Officer.

Q. Explain to the jury.

A. Well, the Navy Department has established purchasing pay officers in the various cities adjacent to the leading navy yards in the countries, and these offices are in the charge of a pay officer, who has charge. He makes all purchases. That is separate and distinct from the Storekeeper's office.

Q. Did either the Storekeeper, or anyone connected with his office, at the Bremerton station, have anything to do with the sending out of proposals asking for bids? A. No, sir.

Q. Did they have anything to do with accepting awards?

A. No, sir. He was called upon occasionally to make a recommendation, [876—824] or something, a discrepancy in the specifications.

Q. Now, when the Purchasing Pay Officer made

(Testimony of Edwin F. Meyer.)

the awards, was there any notification sent to the Storekeeper's office?

A. A copy was sent over to the Storekeeper's office, showing to whom the award was made, the price at which it was made, and when the material was supposed to be delivered, in order that the Storekeeper's office might have the information, when he might expect the supplies, and from whom and the cost at which the purchase was made.

Q. And those facts were certified by the Paymaster? A. Yes, sir, they usually bore his initials.

Q. In that connection, during the time of your connection with the Storekeeper's office at the Bremerton station, did you personally have anything to do with the sending out of proposals, acceptance of awards, making of contracts, or any action in regard to the purchasing of the supplies that were requisitioned for? A. No, sir.

Mr. ALLEN.—I submit that is repetition of matters gone over.

By the COURT.—I thought that had been gone over. He has already answered. Proceed.

Q. Did you ever, at any time, have any understanding or agreement with Mr. Kettlewell, in the purchasing office, or the Navy Pay Office, in Seattle, in regard to the award of contracts, accepting of bids, or the purchasing of goods in that office?

A. No, sir.

Q. The requisitions for open purchase are those the requisitions that require the approval of the Secretary of the Navy?

(Testimony of Edwin F. Meyer.)

A. Over \$500. Requisitions on which the estimate is over \$500, requires the approval of the Secretary of the Navy, that is, if purchase is to be made, what we call open purchase, without [877—825] advertisement.

Q. Was the requisition under which the zinc, fifty thousand pounds was purchased, that is described in the indictment—

A. That is an open purchase requisition.

Mr. SCHLESINGER.—We would like to put Mr. Smith on the stand out of order, with the consent of Mr. Morris.

The COURT.—Very well.

[Testimony of Herbert E. Smith, for Defendants.]

HERBERT E. SMITH, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

Q. Your name is? A. Herbert E. Smith.

Q. Where do you live, Mr. Smith? A. Seattle.

Q. What is your vocation, Mr. Smith?

A. Certified public *account*.

Q. What is the name of your firm?

A. Smith, Robertson & Moorhouse.

Q. Have you ever testified in court in cases involving complicated accounts? A. I have.

Q. Have you ever testified in cases in court in cases involving bookkeeping? A. I have.

Mr. SCHLESINGER.—Do you question the competency of Mr. Smith? [878—826]

(Testimony of Herbert E. Smith.)

Mr. ALLEN.—Mr. House, do you know anything about him?

Mr. HOUSE.—No.

Mr. ALLEN.—Ask him. I don't know, as a matter of fact, Mr. Schlesinger.

Q. How long have you been here in the county?

A. Six years in Seattle.

Q. Public accountant? A. Yes, sir.

Mr. SCHLESINGER.—Mr. Smith, have you, at my request, within the last week, made an examination of a sales ledger of the Great Western Smelting & Refining Company?

A. I have examined the account of the United States Government on the ledger of the Great Western Smelting & Refining Company.

Q. For the purpose of making that examination from whom did you obtain the ledger?

A. Mr. House.

Q. Have you examined that ledger for the purpose of showing the cash payment by the Government for navy yard purchases from September, 1907, down to July 20th, 1910? A. I have.

Q. Have you taken off of that ledger those various items of cash payment by the Government from this Navy Pay Office? A. I have.

Q. Will you please give me the first item therein regularly appearing? May he use this for convenience sake, Mr. Allen?

Mr. ALLEN.—Go ahead; I will use this as a copy.

A. September 19, 1907, \$207.83.

(Testimony of Herbert E. Smith.)

Mr. ALLEN.—Just a moment. This purports to be, according to the statement on top, on the left-hand side, cash payments by the Government for navy yard purchases credited on the [879—827] ledger account of the Great Western Smelting & Refining Company. Mr. Smith, does that statement purport to include in the statement payments made to any of the subsidiary concerns of the Great Western, pointing out to your attention the account of the Fowler Metal Company?

A. No, this is taken from the account of the Great Western Smelting & Refining Company's books of the Government, the account with the Government.

Mr. ALLEN.—And if a purchase was made, or sale made, to the Fowler Metal Company, and the money went through the coffers of the Great Western, it wouldn't show here; isn't that true?

A. If it had been charged on the book, if it had been charged to the Government.

Mr. ALLEN.—Do you find on this statement any item of \$7,417? A. No.

Mr. ALLEN.—The Fowler Metal Company purchase which they say was a subsidiary concern?

A. No.

Mr. ALLEN.—That wouldn't show there, would it?

A. It only shows the case received for purchases which were charged to the Government in that account which I saw.

Mr. ALLEN.—It came directly, then, to the Great Western. If it came through the intermediary of

(Testimony of Herbert E. Smith.)

the Fowler Metal Company it wouldn't show on there.

A. If it hadn't been charged to that account.

Mr. ALLEN.—You don't find an item for \$7,417.09, do you? A. No.

Mr. ALLEN.—It isn't on there, as a matter of fact, is it? A. No.

Mr. SCHLESINGER.—You don't claim they got it, do you? [880—828]

Mr. ALLEN.—Yes, I do.

Mr. SCHLESINGER.—No, the records show they got one-half of it. We will explain that later on.

Q. What is the first item?

A. 1907, September 19th, item 207.83.

Q. And what is the second item?

A. November 25th, \$77.42.

Q. Your next? A. November 25th, \$1,212.26.

Q. Next?

A. December 19, \$600.25; January 11, 1908, \$1,324.46.

Q. Next?

A. January 30th, \$525; January 30th, \$640; February 6th, \$525; March 14, \$364.80; April 13, \$479.33; April 13, \$241.62; April 16, \$471.24; April 25th, \$1,810.82.

Q. Does that close the year 1908?

A. No, there are more items in 1908 below.

Q. Next? A. May 12th, \$469.04.

Q. Next?

A. June 30th, \$243.20; July 7, \$2,747.29; July 11th, \$152.25; August 3d, \$1,450.93; August 5th, \$282.15;

(Testimony of Herbert E. Smith.)

August 27th, \$302.45; August 31st, \$467.50; September 5th, \$459.90; September 24th, \$281.13; November 14, \$521. 1909: January 18, \$484.10; June 29th, \$134.55; July 24th, \$249.14; August 7th, \$65; October 13th, \$397.50. The year 1910: March 8th, \$339.90; March 23d, \$264.25; March 29th, \$281; March 30th, \$719.20; April 29th, \$497.20; May 2d, \$68.88; July 20th, \$46.86.

Q. And that concludes the account, does it?
881—829] A. Yes, sir.

Q. I will ask you whether you have examined what has been termed here the bonus account of Emar Goldberg covering the same period of time?

A. I have.

Q. And have you taken from that so-called bonus account the items therein appearing during that period?
A. The cash charges to that account.

Q. That is, the cash withdrawals, you mean?

A. Yes.

Q. Will you kindly read those items?

A. 1908—

Mr. ALLEN.—I understand the witness now is testifying that this is a recapitulation of the ledger?

A. Yes, sir.

Mr. ALLEN.—All right, go ahead.

A. 1908: April 27, \$30.

Q. Now, I wish you to pause here. April 27, \$30. Will you give me the date and item nearest that in point of time appearing upon the ledger account?

A. 1908: April 27, \$30; April 27, \$500; May 4th, \$160; May 18th, \$336; May 29, \$200; June 1st, \$500;

(Testimony of Herbert E. Smith.)

June 1st, \$210; June 29th, \$25; September 24th, \$150,—

Mr. ALLEN.—Is that the same year?

A. Yes, sir. November 17, \$126; December 17, \$600. The year 1909: January 22d, \$20; February 27, \$15; March 10th, 10; April 26th, \$18.50; May 4th, \$7; July 24th, \$139; August 19th, \$28; August 21st, \$25; September 24th, \$150. The year 1910: January 8th, \$125; April 21st, \$125; April 22d, \$25; June 28th, \$21.80; July 15th, \$24.95; July 30th, \$15; August [882—830] 12th, \$59.75; September 14th, \$185; October 20th, \$63.50; November 30th, \$210.

Mr. SCHLESINGER.—Now, are those dates absolutely correct, Mr. Smith?

A. According to the records that I have.

Q. And are the items correct according to the records? A. Yes, sir.

Mr. SCHLESINGER.—Your Honor, I will ask to have this marked for identification.

(Paper referred to marked Defendants' Exhibit "A-103" for identification.)

Mr. ALLEN.—Is this the original, Mr. Schlesinger?

Mr. SCHLESINGER.—This is a duplicate original.

Mr. ALLEN.—Which one do you want offered in evidence?

Mr. SCHLESINGER.—I want this one marked here. Take the witness.

(Testimony of Herbert E. Smith.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Smith, if the Great Western Smelting & Refining Company were doing business with the United States Government through other names, or other concerns, so-called subsidiary concerns, in the year 1908, the business done by that subsidiary concern would not appear on this statement, isn't that true?

A. Well, I am not familiar with all the accounts of the Great Western Smelting & Refining Company.

Q. Read that question to him. He may not understand the purport of it.

A. I think I understand it, Mr. Allen.

Q. Well, go ahead and answer the question, then.

A. Well, I say, that I have only seen this one account, and unless [883—831] the purchase had been charged to the Government on that one account this would not have been a receipt.

Q. This would not have those receipts. When they were doing business in the name of the Fowler Metal Company, a subsidiary concern, that would and does not appear on this statement; isn't that true? A. Yes.

Q. It was purchased and sold to the United States Government, in the name of the Fowler Metal Company, a full ton, or full car of zinc, 25 tons or thereabouts, on or about the month of April, 1908, and they received therefor, in the name of the Fowler Metal Company, the sum of \$7,417.09, that would not appear and does not appear on that account; isn't

(Testimony of Herbert E. Smith.)

that correct? A. That amount does not appear.

Q. You don't know how many, and in how many, or in the names of how many concerns the Great Western was then doing business with the United States Government, do you? A. No, sir.

Q. You are simply taking those amounts where the business is done directly in its own name; is that true?

A. Where it sent through that one particular account on their ledger.

Q. Yes, sir. And you don't know anything about their connection with the Fowler Metal Company?

A. Yes.

Mr. ALLEN.—We object to this only for this reason, under the statement of the witness himself he shows it is not an accurate account of the business done by the Great Western with the United States Government, and under the statement of counsel.

The COURT.—It is simply stated this is the account of the [884—832] Great Western only.

Mr. ALLEN.—Then I will not object to that.

(Paper referred to received in evidence and marked Defendants' Exhibit "A-103.")

Mr. ALLEN.—Mr. Riddell calls my attention to this:

Q. You copied off the half of one exhibit in this case and half of the other, haven't you?

A. Well, it is not exactly that, Mr. Allen.

Q. But practically so in effect that?

A. It is, yes. The first column represents the cash that was credited to the Government's account

(Testimony of Herbert E. Smith.)

on the ledger of the Great Western Smelting & Refining Company for purchases where the payment came from the Bremerton navy yard.

Q. Direct?

A. As nearly as I could determine with Mr. House's system.

Q. As nearly as you could determine. From what sheet did you obtain these items?

A. Those are from the ledger account of the Government on the Great Western Smelting & Refining Company's books.

Q. Can you pick out for the sheet from which you obtained those items?

A. If you will hand me their account I can show it to you.

Q. Step down here.

Mr. RIDDELL.—Where do you start?

A. I start right here (showing).

Mr. ALLEN.—You didn't include, then, the cash which came through purchases made at Washington, is that right?

A. Yes.

Q. By an instruction from counsel on the other side you omitted those items, is that right? [885—833] A. I did.

Mr. SCHLESINGER.—By instruction of counsel and by consent of your associate counsel, Mr. House.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Mr. Smith, have you likewise examined for me

(Testimony of Herbert E. Smith.)

a large number of folders in this building?

A. I have examined a number, yes, sir.

Q. From whom did you get such folders?

A. Mr. House.

Q. Did you hear me ask Mr. House to select folders at random of any late year to give you for the purposes of examination? A. Yes, sir.

Q. Did he thereupon go through *one* numerous cases in the adjoining office and take therefrom certain folders? A. He did.

Q. And have you examined those folders?

A. I have.

Q. For what purpose did you make such examination?

A. To compare the prices on the bids from the various bidders on different Government contracts.

Q. For the purpose of ascertaining the price over and above the original requisition or Government estimate, was that one of your purposes?

A. In some of them I did that.

Q. And was it another purpose to ascertain the difference between the lowest and the highest bid where there were several bids interposed? [886—834] A. Yes, sir.

Q. And was it the purpose of obtaining the percentage in excess of the actual award?

A. Yes, sir.

Q. Did you or did you not, without going into details, find any variations between the lowest and highest bids? A. I did.

[**Testimony of Edwin F. Meyer, for Defendants
(Recalled).**]

EDWIN F. MEYER on the stand, direct examination (resumed).

(Mr. SHIPLEY.)

Q. Mr. Meyer, handing you a folder marked Defendants' Exhibit "A-16"—Mr. Clerk, has that been introduced in evidence, or merely for identification?

The COURT.—It is not introduced.

Mr. SHIPLEY.—State what that is, please.

The COURT.—Requisition 207 has been admitted.

A. This is requisition 335.

Mr. SHIPLEY.—That is requisition what?

A. 335.

The CLERK.—No, it has not been admitted.

Mr. SHIPLEY.—State the date of it, please, Mr. Meyer.

A. February 25th, 1908.

Q. To what subject matter does that relate?

A. Purchase of—

Mr. ALLEN.—Just a moment, now. We object to you reading into the record before this jury—

Mr. SHIPLEY.—Merely to show it is admissible is all.

Q. State the subject matter, to what the folder relates? [887—835]

Mr. ALLEN.—All right, ask him the question.

A. Turpentine and bolts and nuts.

Mr. SHIPLEY.—And dated in what month and what year?

(Testimony of Edwin F. Meyer.)

A. February, 1908.

Q. That folder is a record of what office?

A. Storekeeper's office, navy yard.

Q. It was produced into court by whom?

A. We asked they be produced here.

Q. And produced by Mr. House pursuant to your request? A. Yes, sir.

Mr. SHIPLEY.—We will offer this folder in evidence.

Mr. ALLEN.—We object, your Honor, for the reasons set forth yesterday and renewed at this time. Your Honor, this folder and its contents are immaterial, irrelevant and incompetent, that a discussion of any matter connected with it could not afford the jury any possible light. Your Honor knows perfectly well the purpose—

Mr. SHIPLEY.—The only portion of the exhibit we care to put before the jury is the one with reference to bolts and nuts, a purchase made in February, 1908, immediately preceding the preparation of the requisition in this trial.

Mr. ALLEN.—If counsel will assure me they are going to pursue some particular standard article I will not object to their following that line of defense, but if—

The COURT.—Admitted as to bolts and nuts.

(Folder referred to received in evidence and marked Defendants' Exhibit "A-16.")

Mr. SHIPLEY.—Mr. Meyer, calling your attention to the item of bolts and nuts. Explain to the jury the transaction in [888—836] reference thereto?

(Testimony of Edwin F. Meyer.)

A. Well, on this day—

The COURT.—That is, read the exhibit.

Mr. SHIPLEY.—How was that?

The COURT.—You mean to read the exhibit?

Mr. SHIPLEY.—Yes, your Honor, just the portion that relates to the bolts and nuts.

A. This *is* requisition for item two is 500 pounds of bolts and nuts, hex. the estimated cost on the requisition is 12 cents, 500 pounds. It was purchased from the Washington Steel & Bolt Company at 12 cents per pound.

Q. Where was this firm?

A. Edmonds, Washington.

Q. What was the time of delivery specified in that requisition?

A. The requisition was dated February 25th and delivery was required on or about April 15th.

Q. Who prepared that requisition?

A. Prepared in my office.

Q. Under your supervision?

A. Under my supervision.

Q. Who prepared the estimate?

A. Well, in the same manner that all the estimates were prepared, either—

Mr. SHIPLEY.—Just explain how it was done, Mr. Meyer.

A. It is pretty difficult to tell now who actually put that estimate on. It was done in my office by someone there, either by myself or some of my assistants there.

Q. Under your supervision? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

A. February, 1908.

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Mr. SHIPLEY.—Just explain how it was done, Mr. Meyer.

A. It is pretty difficult to tell now who actually put that estimate on. It was done in my office by someone there, either by myself or some of my assistants there.

Q. Under your supervision? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Who was responsible for that estimate? [889—837] A. I was, sir.

Q. From what source was knowledge obtainable at that time in regard to the price of bolts and nuts?

A. Previous purchases from dealers, knowledge of the cost of articles, general knowledge.

Q. Any additional explanation you wish to make of that transaction? A. No, sir.

Q. State whether or not this is the same class of articles for which you testified yesterday that the eastern price was five cents?

Mr. ALLEN.—I object to that as being leading. If this witness wants to state—

Mr. SHIPLEY.—From the different styles, different shapes of bolts and nuts. Now, the question is whether these conformed to the specifications included in the requisition concerning which he testified last evening.

Mr. ALLEN.—If this witness wants to state, your Honor, that he knew this number purchased in the east to be five cents and he placed an estimate of 12 cents on here I have no objection, but I don't think he ought to make comparison unless he states of his own knowledge.

The COURT.—Objection withdrawn.

Mr. ALLEN.—I make the objection for that reason, as incompetent, immaterial and irrelevant, as to what his judgment might be as to the eastern market, unless he has some—

The COURT.—Sustained.

Mr. SHIPLEY.—Note an exception. I am not

(Testimony of Edwin F. Meyer.)

asking him that, I am simply asking him if the specifications calling for these bolts and nuts is the same and requires the same character of [890—838] supplies as did the requisitions concerning which he testified last night, which he certainly must know. There might be a difference in character, description and quality of material.

Q. Are the bolts and nuts called for by this requisition a stock article? A. Yes, sir.

Q. Standard? A. Standard, yes, sir.

Q. Are they called for under the same specifications with the other requisitions?

A. Approximately the same. I have to compare them. The general specifications are the same.

Q. In the case of specifications for bolts and nuts, who would prepare the specifications?

A. They were prepared in the Department at Washington, in the Bureau.

Q. Did the Storekeeper's office have anything to do with that matter? A. No, sir.

Q. What do you mean by the specifications? Counsel wants to know if you refer to the printed part?

A. The printed part, yes, sir, the specifications which are drawn up at length at Washington; we merely refer to those specifications by number.

Q. Were the specifications inserted in exhibit "J" prepared in Washington?

A. I will have to see the exhibit, Mr. Shipley.

The COURT.—That is the same one you had.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—Yes. That was the old number, “A-16” (handing same to witness). [891—839]

A. Yes, sir, about in accordance with the specifications 5-B-4, that is Bureau specifications.

Q. Mr. Meyer, calling your attention to Plaintiff’s Exhibit “9,” regulations of 1905, I will ask you to turn to page 293, subdivision of section 6, and read to the jury the portion of that regulation that applies to certificate of the Purchasing Pay Office with reference to prices.

Mr. ALLEN.—Are you going to offer that section in evidence?

Mr. SHIPLEY.—Yes. The whole book is in evidence, isn’t it?

Mr. ALLEN.—I didn’t understand so. I read my sections in.

Mr. SHIPLEY.—Very well, then we will offer that particular subdivision and have it read. Read it to the jury.

A. “Section 6: The Purchasing Pay Officer shall, except in the case of Navy Pay Office contracts, certify on all dealers’ bills for orders placed by him, that he purchased of articles thereon or employed the services without public competition; that the prices charged, amounting in all to blank dollars and blank cents, are correct and reasonable and the lowest market rates at which the articles or service could be obtained; and such bills shall be attached to and made a part of the first of the voucher prepared by the General Storekeeper.”

Q. Mr. Meyer, in the performance of your duties

(Testimony of Edwin F. Meyer.)

at the Storekeeper's office at the Bremerton station, did you have anything to do with the preparation or the making of such certificate?

A. No, sir, that was a certificate of the Pay Officer.

Q. Did you have anything of these transactions that have been introduced in evidence before this jury, have any connection or anything to do with any such certificate? A. No, sir.

Q. That exhibit "9" you hold in your hand?
[892—840]

A. "9," yes, sir.

Q. Turn to page 290 and read therefrom into the record the regulation in regard to inspection, which we offer in evidence.

A. "Article 1327: When supplies are received General Storekeepers shall immediately call an inspection of them, and it shall be the duty of Commandants to see that Boards of Inspection pass upon them without delay."

"Article 1326: For the inspection of supplies submitted for delivery there shall be at all navy yards and stations a Board of three officers to be appointed by the Commandant, two as permanent members and the other as a representative of the Bureau to which the supplies to be inspected pertain. At inspections of this Board a representative of the General Storekeeper shall be detailed by him, who shall give any information pertinent to the inspection in question that may be desired by the Board, and shall bring to the attention of the Board any facts that may bear

(Testimony of Edwin F. Meyer.)

upon the protection of the public interests.”

Q. Mr. Meyer, in the indictment in this case you are charged with causing articles delivered to be inspected and accepted. State to this jury whether or not you had anything to do, or any power over, the inspection of goods or supplies delivered at the Bremerton Navy Yard.

A. Absolutely nothing, sir; that was a function of the Board.

Q. These officials who composed this Board, what was their relation to you in rank?

A. Well, they were officers of the navy; I was a clerk, an employee, an inferior.

Q. State to the jury whether or not officials of that rank would have brooked any interference or suggestion from you, a mere clerk. [893—841]

A. Why, they have considered suggestions.

Q. I mean as to the matter in which they performed their duty. A. No, sir; no, sir.

Q. What was the custom and what was done in the particular case now under investigation in regard to stock being inspected before it is taken into the stock of the navy yard?

A. Well, no stock is taken, no material is taken into stock until after it is inspected.

Q. What do you mean by Inspection Calls? State to the jury so they will understand.

A. An Inspection Call is a paper prepared by the Inspection Call Clerk in the Storekeeper's office that is sent to the Board of Inspection, which shows on the face of it all the facts that they need for the in-

(Testimony of Edwin F. Meyer.)

spection of the articles. After the inspection—

Q. Now, was the particular transaction, as covered or involved under requisition 438, handled in the same manner, or was there some exception made in that case?

A. It was handled in the same manner, as far as I know, sir.

Q. What was the relative position of this Inspection Call Clerk to the General Storekeeper?

A. He was a clerk in the office of the requisition section; he was an employee.

Q. And at what stage of the proceeding was his action set in motion?

A. After the delivery of the goods. The delivery was supposed to be accompanied by a memorandum or an invoice from the dealer. Immediately on receipt of the goods on the navy yard the receiver of the yard would report to the Inspection Call Clerk the [894—842] arrival of these goods. He thereupon would prepare this call for inspection, or put in motion these papers.

Q. Well, how was that put in motion, what was done?

A. Well, he drew up the record number of inspection calls, detailing the information that they would require for the purposes of inspection.

Q. Who was required—

A. The Inspection Call Clerk would do this, that the Board of Inspection would require, and would forward these papers to the Board of Inspection.

Q. And did his duties cease at that point?

(Testimony of Edwin F. Meyer.)

A. At that point, yes, sir.

Q. And then the duties of the Inspection Board, covered by the regulation which you have just read to the jury, were set in motion?

A. Upon the receipt by them of these papers.

Q. Did this Inspection Call require the signature of the General Storekeeper?

A. He did sign them, yes, sir.

Q. Then after the Board had made its inspection what was done?

A. The Board would report its findings first to the storekeeper and then to the Bureau in the weekly report.

Q. What bureau?

A. Bureau of Supplies and Accounts.

Q. At Washington, D. C.?

A. At Washington, yes, sir.

Q. Was this made out with two copies?

A. Well, its report to the Bureau would be on another form. There were usually three copies of the Inspection Call made. [895—843] One copy, or two copies, were returned to the storekeeper and one copy returned in the report.

Q. Two copies that were returned to the storekeeper. What became of those?

A. One copy was sent out to the storeman handling the material and the other copy filed in these folders we kept in the office there.

Q. Now, who made the report to the Bureau at Washington, D. C.?

A. The Board of Inspection. They maintained—

(Testimony of Edwin F. Meyer.)

Q. Did they go directly from the Board?

A. Yes, sir, we had nothing to do with that.

Q. Did they pass under your supervision or under your control? A. No, sir.

Q. In any manner whatever?

A. The Board of Inspection maintain what is known as an office, the Board of Inspection office and it kept one or two clerks there. It was their duty to prepare these matters for the Board.

Q. And their report, then, went directly to the Bureau at Washington? A. Yes, sir.

Q. Did you ever at any time have anything to do with the inspection of stock or material, personally, I mean? A. No, sir.

Q. I wish you would turn to the same exhibit "9," navy regulations of 1905, and read article 1333. What page is that? A. 292.

Q. Read out loud, please, Mr. Meyer.

A. "The General Storekeeper is responsible for the correctness of prices and of the computations in any voucher for supplies [896—844] accepted; but if any other officer should be cognizant of any error he shall at once draw the attention of the Commandant to the matter."

Q. That is all of that applicable to that subject, is it, Mr. Meyer? A. Yes, sir.

Q. Is the regulation on that same page with reference to the storekeeper being responsible for inspection?

A. "The Board of Inspection shall keep a record of its work—"

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—What are you reading now?

A. Article 1335. “The Board of Inspection shall keep a record of its work, showing date of inspection, articles inspected, and acceptance or rejection, noting the cause, if the latter. The inspection must, in all cases, be thorough and must be made personally by the Board.”

Mr. SHIPLEY.—I will ask you this question, Mr. Meyer, whether at any time, in any of these matters under investigation before this jury, you ever, in any manner, attempted to influence, control or in any manner effect the result of the inspection by the Inspection Board? A. No, sir, I could not if I tried.

Q. Did you ever at any time have any agreement, enter into any scheme or any conspiracy or combination with Mr. Kettlewell or Mr. Goldberg or Mr. Corder, or any one or more of them, to influence in any manner the inspection, rejection or acceptance by the Inspection Board of articles that were delivered at the Puget Sound Navy Yard? A. No, sir.

Q. Mr. Meyer, what is meant by public bill?

A. That is a paper that is prepared in the office of the General [897—845] Storekeeper showing the acceptance of the material, the price paid, in order that payment may be made for the delivery.

Q. It was prepared by whom?

A. What we call a Public Bill Clerk in the requisition office.

Q. This clerk was under your jurisdiction?

A. General supervision, yes, sir; not immediately, but he was in the office.

(Testimony of Edwin F. Meyer.)

Q. He was in the office?

A. He received the report of the Board of Inspection, and if the material passed inspection he would prepare these papers in order that payment may be made.

Q. I call your attention to Plaintiff's Exhibit "10," section 113, under the general head of "Public voucher, money voucher," and ask you to read that.

Mr. ALLEN.—Mr. Shipley, I have called your attention several times—I submit, your Honor, unless he wants me to go over this, to read it himself to the jury.

Mr. SHIPLEY.—"Section 113: When supplies or services furnished to the Navy are to be paid for, a 'public bill' is prepared from the commercial bill submitted by the merchant, dealer or contractor. The public bill really does not become a complete 'voucher,' except as to the receipt of purchased stores, until money is paid out under it and a receipt for the money is obtained on it. It then becomes a money voucher in the accounts of the disbursing officer who pays the bill. But the terms public bill and voucher are used indiscriminately in General Storekeeper's work to signify the same thing—the public bill at any stage of incompleteness. On all public bills for supplies bought in the open market must be a certificate of inspection, by the senior member of the Board of Inspection; [898—846] A certificate of price and purchase, by the Purchasing Pay Officer; and a certificate of receipt, by the General Storekeeper. On public bills for supplies bought under written con-

(Testimony of Edwin F. Meyer.)

tract must be a certificate of inspection by the senior member of the Board of Inspection and a certificate of receipt, by the General Storekeeper. In the case of open contract service, the certificate of price and procurement by the Purchasing Pay Officer, and a certificate of receipt by the General Storekeeper must appear on the public bill. Public bills are prepared in triplicate (with an extra copy, not forwarded, for the files of the class ledger bookkeeper), and but one copy, the 'first' bears the necessary signatures to the certificate, approval, etc. When completed as to certificates, the General Storekeeper forwards them to the Commandant, who approves and forwards them to the Paymaster General. This latter officer approves and directs payment at the most convenient Navy Pay Office. Each public bill for supplies acts as a receipt voucher in the accounts of the class ledger bookkeeper, being posted in the bill book and appearing in the abstract of receipted vouchers forwarded with the quarterly balance sheets (the stock ledgers are posted from Inspection Calls, before public bills are prepared). No copies of public bills are forwarded with the balance sheets to the Bureau of Supplies and Accounts, the Bureau having retained the 'Third' of each one at the time of approving it. Reservation vouchers (form 75) are prepared upon the completion of a written contract and comprise the aggregate of the ten per cent reservations of all previous public bills prepared under the contract. Of course, when a contract is settled completely by one public bill no reservation of ten per

(Testimony of Edwin F. Meyer.)

cent is made, and no reservation voucher is necessary.”

Q. Mr. Meyer, in your office was there a clerk designated public [899—847] bill clerk?

A. Yes, sir.

Q. And did he perform the functions or duties that fell to the storekeeper to prepare that has been designated in the regulation just read? A. Yes, sir.

Q. Did the work performed by the public bill clerk pass under your supervision or inspection, did you see it? A. Yes, sir.

Q. Where did they go after that?

A. Well, they came from his desk to my desk for—that is, in order that I might see it was in proper form, nothing was left off of that that should have been put on, and from my desk taken into the Storekeeper’s office for his signature.

Q. And from there where did they go?

A. Forwarded to the Bureau of Supplies and Accounts.

Q. Mr. Meyer, in the preparation of requisitions for zinc for use at the Puget Sound Navy Yard, state to the jury where such were prepared, where they emanate and so forth.

A. Well, some requisitions for zinc were prepared in the office of the Naval Constructor, some—

Mr. ALLEN.—What time?

Mr. SHIPLEY.—Well, say in 1907 and 1908.

A. I am speaking about that time, sir. And some in the office of the Engineer, and others in the Storekeeper’s office.

(Testimony of Edwin F. Meyer.)

Q. Under what circumstances would they be prepared in these different departments?

A. Well, in the early part—in the early and middle part of the year 1907, they were all, I think, prepared in the offices of the Yard Department. [900—848]

Q. I didn't hear that.

A. I say, in the early and middle part of the year 1907 I think all requisitions for zinc were prepared in the offices of the Yard Department. In the latter part of that year we began the preparation of some.

Q. About what year?

A. Well, as near as I can recall from the folders they have brought into court, I think it was probably about the early fall of that year that we began the preparation of some requisitions.

Q. Meaning by that about what month?

A. August, September, October.

Q. The year 1907?

A. It has been quite a long while ago. I can only tell from the records.

Q. From an inspection of the files and the records which have been brought into this court and introduced as Government's Exhibits "65," "66," "67" and "68," I will ask you to state to the jury by whom those several requisitions were prepared.

A. Exhibit "65" is requisitioned 79, prepared October 7th. That was prepared in the office of the Engineer.

Q. Who was that?

A. There is no signature here. I think it was Cap-

(Testimony of Edwin F. Meyer.)

tain Stacey Potts at the time.

Q. What was his rank in the United States Navy?

A. Captain.

Mr. ALLEN.—What is the requisition for?

Mr. SHIPLEY.—State the number of the requisition and date.

A. 79 N. S. F. It is for 25 rolled zinc plates, 2800 pounds, estimate \$420, or 15 cents per pound, estimate.

Q. Under what date is that requisition? [901—

849] A. October 7th, 1907.

Q. In the preparation of that requisition by whom was the estimate made?

A. Made in the office of the Engineer of the navy yard.

Q. By whom was the time of delivery determined?

A. By the Engineer Officer, or some one acting for him.

Q. What was the time of delivery prescribed in that particular case?

A. Thirty days after date of contract.

Q. Just trace the procedure in the case of that transaction so the jury will be in possession of the facts.

A. Well, the records show that on October 7th the requisition was prepared to be delivered within thirty days, and that the award was made to W. A. Corder Company. The estimated price on the requisition was 15 cents. The award was made by the Purchasing Pay Officer at 11 cents.

Q. Did that go to the Bureau for approval?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, Bureau of Steam Engineering approved it.

Q. At Washington? A. Yes, sir.

Q. When?

A. The Paymaster General approved it.

Q. What was his relation to the Navy Department, what was his rank?

A. Chief of the Bureau of Supplies and Accounts, Paymaster General.

Q. And those files bear his initial approved?

A. The stamp of his office; the signatures are not put on these copies.

Q. Does that requisition show for what purpose that zinc was required? [902—850]

A. For the use of U. S. "Wisconsin."

Q. What was that ship?

A. One of the battleships.

Q. Where was she at that time?

A. At the navy yard or—I think she was there, if I am not mistaken.

Q. That was in the fall of 1907? A. Yes, sir.

Q. What month? A. This was October.

Q. How long was that prior to the preparation by you of the requisition in the case, 438?

A. About six months. October is the date of this and April is the date of the requisition 438.

Q. Was the record in your office showing this estimate by the Engineering Officer of the navy yard at 15 cents?

A. This is one of the files there at the time, yes.

Q. Now, take up the next exhibit.

(Testimony of Edwin F. Meyer.)

A. Exhibit "66" is requisition prepared on the same day by the same office.

Q. That is, same as the last preceding one?

A. Same as the last preceding one.

Q. Just state the date.

A. This is requisition 79 prepared October 7th—no, this is a Storekeeper's copy.

The COURT.—"66" is navy yard?

A. Yes, a navy yard copy, "67," exhibit "67."

Mr. SHIPLEY.—That is the same one?

A. Yes. Requisition prepared the same day for the "Oregon."

Q. What is the "Oregon"? [903—851]

A. One of the battleships we had around here.

Mr. ALLEN.—What is the number of the requisition?

A. Requisition 81, sir, Naval Supply Fund. And that calls for 25 plates, about 2,800 pounds, estimated cost \$420.

Mr. ALLEN.—How big are the plates?

A. 1½ inch by 24 by 36. The delivery was required within thirty days, estimated cost \$420, or 15 cents per pound.

Mr. SHIPLEY.—That was prepared by the head of the Engineering Department, or under his supervision?

Mr. ALLEN.—Your Honor, these instruments, if they are in evidence, speak for themselves. He may read from those things.

Mr. SHIPLEY.—Well, I am asking him to look at it.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—He hasn't stated he has any personal knowledge.

The COURT.—I think you can read such part as you desire and not have the witness conclude.

Mr. SHIPLEY.—I am simply asking him to read from the exhibit. I thought he could do it more intelligently than any other way. He can tell whether it bears the signature of the Engineering Department.

A. I will say that they do not bear the official signature.

Q. Well, there is some mark on there that indicates it was prepared in the office? A. Yes, sir.

Q. What is it, reading from the exhibit?

A. Yes, sir.

Q. Was that requisition sent to Washington for authorization?

A. Yes, sir, bears the stamp of approval of the Bureau of Steam Engineering and of the Paymaster General.

Q. And that is one of the exhibits that was brought into this case by the Government? [904—

852] A. Yes, sir.

Q. The same as the one last testified to?

A. Yes, sir.

Q. What does that record show the amount of the award, or to whom awarded, and the price?

A. Awarded to W. A. Corder Company at 11 cents per pound.

Q. What date? A. October 25th, 1907.

Q. And that record was in your office about that

(Testimony of Edwin F. Meyer.)

time, what period?

A. The time it was made, October.

Q. And remained in your office up to the time of the initiation of the requisition involved under this indictment on April 1st? A. Yes, sir.

Q. Now, turn to the next?

A. These are all covered by these two.

Q. The other exhibit relative to the same transaction is a navy folder?

A. Is a navy folder, yes, sir.

Q. Mr. Meyer, referring to requisition 58 of September 4th, 1907, introduced by the Government in this case as Plaintiff's Exhibit Number "75"—

Mr. MORRIS.—Isn't that 1908 instead of 1907?

Mr. SHIPLEY.—No, December, 1907.

Q. I would ask you to state what that is?

A. September 4th, 1907, is the date.

Q. The date and the number?

A. This is requisition number 58, Naval Supply, dated September 4th, 1907.

Q. What is the article that was requisitioned for in that case.

A. A number of items— [905—853]

Mr. RIDDELL.—The Court didn't get that. What is that?

The COURT.—Plaintiff's Exhibit "75"?

A. "75," yes, sir.

The COURT.—Is that series 1908?

A. Series 1908.

Mr. SHIPLEY.—Mr. Meyer, to straighten this matter up, state what these series mean, when the

(Testimony of Edwin F. Meyer.)

year commences and when it ends?

A. Requisitions numbered in the office for identification beginning with July 1st, our fiscal year, and all requisitions prepared under a certain series, under a given series, beginning with July 1st, would be numbered consecutively during that year until June 30th of the next year.

Q. For instance, if a series commenced with July 1st of 1907 and ended the last of June, 1908, you would identify that as what series?

A. 1908, even though it was prepared in 1909.

Q. Taking the expiration of the series as the series number?

A. As the fiscal year, yes, sir. Item two of this requisition 58 calls for zinc plates, 10,075 pounds.

A. It carries an estimated price of 12 cents. The requisition has been corrected to read from 10,075 to 36,027 pounds, and the estimated price corrected from \$1,200 to \$435.34. The time of delivery was changed from September to October 15th.

Q. By whom were those changes made, under whose direction?

A. There is nothing that will show on the face of it here, Mr. Shipley. I know it was done in the Bureau.

Q. Are there any communications or endorsements in there from the Bureau at Washington showing the changes?

A. No, sir, they do not send endorsements when they make corrections of that kind. They make the

(Testimony of Edwin F. Meyer.)

corrections on a piece of paper and [906—854] forward it.

Q. And was that done in this case?

A. Yes, sir.

Q. The exhibit shows that? A. Yes, sir.

Q. By whom was that requisition originally prepared or initiated?

A. By the Naval Constructor, in the Naval Constructor's Office.

Q. By what department of the navy yard was the estimate fixed at 12 cents?

A. The Construction and Repair Department, under the Naval Constructor.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did anyone in the Storekeeper's office have anything to do with the preparation of that estimate at 12 cents? A. No, sir.

Q. Or of fixing the time of delivery?

A. No, sir.

Q. Does this folder show the reception and inspection of the goods?

A. No, sir, this shows merely the award.

Q. To whom was that award made in that instance, if shown? A. W. A. Corder & Company.

Q. At what price? A. Ten and a quarter cents.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did you ever have, either with reference to this transaction or the last two interrogated about, did you ever have any communications with Mr.

(Testimony of Edwin F. Meyer.)

Corder, or any conversation with him in [907—855] regard to those transactions prior to the award that was made to him? A. No, sir.

Q. Did you have any agreement, understanding or any combination with Mr. Corder by which these particular requisitions were to be prepared, estimates fixed and the goods inspected and received?

A. No, sir.

Mr. ALLEN.—Referring to these particular ones?

Mr. SHIPLEY.—And the one now in hand, and the last two preceding?

A. No, sir.

Q. Did you have any jurisdiction or control, or was it within your power to control the matter of fixing the estimate, the time of delivery, the specifications or the inspection or acceptance of the articles enumerated in that exhibit, or shown in that exhibit?

A. Nothing whatever to do with it, either of those transactions.

Q. I will ask you this question, Mr. Meyer: You called attention to the fact that corrections were made in this particular requisition. State whether it was an unusual or an extraordinary thing to happen in the procedure through the General Storekeeper's office, as shown by the records and files of that office, during your experience?

A. The Bureau at Washington occasionally made corrections in our requisitions.

Q. Calling your attention to requisition 153, Plaintiff's Exhibit "77" and requisition 174, Plain-

(Testimony of Edwin F. Meyer.)

tiff's Exhibit "78," I will ask you to examine those two folders introduced by the Government in this case as evidence, and call your attention to the procedure in those two cases.

A. Plaintiff's Exhibit "77" is requisition 154, dated November 15th, 1907; Plaintiff's Exhibit "78" is requisition 153, dated [908—856] November 15th, 1907. It is the same day. For zinc plates 1½ by 24 by 36. The specifications are the same as that used by the Naval Constructor in exhibit "75." There were no Navy standard specifications in force at that time.

Mr. ALLEN.—No what, Mr. Meyer?

A. Navy standard, printed specifications, or Bureau specifications. They both bear an estimate of 15 cents. That is the same requisition that was just—one is G. S. K. copy and the other a Pay Office copy.

Mr. RIDDELL.—I thought one was requisition 153 and the other 154?

A. Yes. Well, they are both Navy Pay Office copies.

Mr. RIDDELL.—They are both Navy Pay Office copies?

A. They are both Navy Pay Office copies.

Mr. SHIPLEY.—Mr. Meyer, I will ask you if any one of those folders, I don't know whether it is requisition 153 or 154, there is a letter from the Storekeeper. Can you find that there?

A. We should have the Storekeeper's files of these two numbers.

(Testimony of Edwin F. Meyer.)

Mr. MORRIS.—That is the Storekeeper's files 153 and 154, Mr. Allen.

Mr. SHIPLEY.—I have got them here. They are among these papers here.

Q. Mr. Meyer, what do those folders show in regard to the awards and the price on which the purchase was made?

A. The award is made to the Great Western Smelting & Refining Company in both cases at 16 cents per pound.

Q. What date? A. December 3d, 1907.

Q. For what use?

A. Shows it is for stock on a requisition, but it was for some [909—857] special purchase, as I think the Storekeeper's folder will show.

Q. These particular folders don't show the particular purpose? A. No, sir.

Q. Is there anything in those folders showing whether that requisition went to Washington and received the approval of the Bureau?

A. Yes, sir, they went to Washington.

Q. Does it show the date of the approval?

A. November 21st, 1907.

Q. What is there there showing that? Just read it to the jury.

A. Stamp here of the Bureau of Supplies, and ordered purchased November 27, 1907, Navy Pay Office, Seattle, Washington.

Q. And that is the authority from whom to whom to complete these purchases.

A. It is authority from the Chief of the Bureau

(Testimony of Edwin F. Meyer.)

of Supplies and Accounts at Washington, D. C., to the Pay Officer in Seattle to complete that purchase.

Q. To do what? A. To make the purchase.

Q. At what price?

A. At the lowest price obtainable.

Q. What was obtainable in that case?

A. The lowest price in this case was 16 cents per pound.

Q. Are the proposals there?

A. The proposals are there, yes, sir.

Q. What do the facts show as to the proposal?

A. That the award was made at 16 cents per pound.

Mr. MORRIS.—Mr. Meyer, haven't you 153 and 154?

A. I have 153 and 154 of the Pay Office. This is Storekeeper's 153. [910—858]

Mr. MORRIS.—Haven't you 154, Storekeeper's?

A. No, sir.

Mr. SHIPLEY.—Does that requisition show by whom the requisition was prepared?

A. In the Storekeeper's office. I have that letter now that you referred to, sir.

Q. Well, read it, please. That is from what exhibit, first?

A. Exhibit "70," Plaintiff's Exhibit "70."

Q. And what requisition?

A. Requisition 153, Naval Supply Fund.

Q. That is exhibit "70"? A. Yes, sir.

Q. Introduced by the Government in this case?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Read that, please.

A. This is to the Commandant of the navy yard.

Mr. ALLEN.—Is it so addressed?

A. Yes, sir.

Mr. ALLEN.—At the bottom?

A. Yes, sir. "Sir: The following mentioned Naval Supply Fund Requisitions cover material required immediately for use in Yard Department and for use on the 'California.' Number 153, 3,000 pounds zinc plate; number 154, 3,000 pounds zinc plate; number 156, 4,000 pounds boiler zinc; 169, 4,000 pounds boiler zinc.

Telegraphic authority was requested for the purchase of certain of these requisitions in addition to the approval of the Bureau in order to meet the exigencies of the service, and it is understood that purchase was authorized through the Navy Pay Office, Seattle, Washington, but up to date this office has no information as to when delivery may be expected. [911—859]

As the nondelivery of the above-mentioned material will delay the sailing of the 'California' it is requested that the Purchasing Pay Officer, Seattle, Washington, be requested to purchase with all possible expedition for immediate delivery at this yard. Very respectfully, Paymaster, U. S. Navy, General Storekeeper."

Mr. SHIPLEY.—Now, that letter was sent by whom to whom?

A. By the Storekeeper, Navy Yard, Puget Sound, to the Commandant of the Navy Yard.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Are you testifying as to your own personal knowledge about that, or referring to the record before you?

A. Referring to the record.

Mr. ALLEN.—You don't know anything about it personally?

A. Well, I wrote the letter.

Mr. SHIPLEY.—That is one of the exhibits offered in evidence by the government in this case against you? A. Yes, sir.

Q. By whom was that particular letter dictated?

A. It was dictated by me.

Q. For what purpose?

A. For the purpose of expediting the delivery of the zinc called for under those requisitions.

Q. Were the facts stated in that letter true or false? A. True.

Q. Was that letter written as any part of a conspiracy, scheme or combination with any persons whomsoever to work a fraud upon the United States Government? A. No, sir.

Q. Did the necessities which existed at that yard at that time require the action that is stated in that letter? A. Yes, sir. [912—860]

Q. What action did the Commandant of the Puget Sound Navy Yard take in reference to that subject matter as disclosed by the evidence?

A. There is nothing in this folder to show, Mr. Shipley.

Mr. MORRIS.—We have 154 now, Mr. Meyer.

Mr. SHIPLEY.—At this time, if the Court please,

(Testimony of Edwin F. Meyer.)

we offer the Storekeeper's file for this same requisition, number 154, series 1908, dated November 15th, 1907.

The COURT.—Has that been marked for identification?

Mr. SHIPLEY.—It has not, your Honor.

The COURT.—That will be Defendants' Exhibit "A-104."

Mr. SHIPLEY.—No objection to that, is there?

Mr. ALLEN.—No, not if you have any use for it.
(Folder referred to received in evidence and marked Defendants' Exhibit "A-104.")

Mr. SHIPLEY.—It is yard folder for requisition 154.

Mr. ALLEN.—It is yard folder for the other exhibit already in evidence.

Mr. SHIPLEY.—That is the companion folder, or the yard folder, for the same transaction concerning which you have just been testifying to the jury?

A. Yes, sir.

Q. Calling your attention to this folder, Mr. Meyer, examine same and see if there is anything there throwing any light upon this transaction.

Mr. ALLEN.—Which transaction is this?

Mr. SHIPLEY.—To which he has just testified?

A. Well, this is merely the Storekeeper's copy, or the yard copy, of 154. It contains a memorandum that I gave to the clerk who physically prepared the requisition. [913—861]

Q. Well, read it.

A. It originally was 3,000 pounds of zinc plate 1½

(Testimony of Edwin F. Meyer.)

by 24 by 36, at 12 cents; item two, 3,000 pounds zinc plate $\frac{1}{2}$ by 24 by 36 at 12 cents.

Mr. ALLEN.—I suggest the jury better take a look at that.

Q. That is your handwriting? A. Yes, sir.

Mr. ALLEN.—Let him read it.

A. (Reading:) “To be practically pure soft zinc, and to be thoroughly compressed by rolling, making a solid homogeneous material, smooth and free from defects.”

Mr. SHIPLEY.—This memorandum was written by whom? A. Written by me.

Q. For what purpose?

A. To the clerk who was actually going to prepare the requisition, to guide him.

Q. And what was done with that memorandum by you?

A. I turned it over to the clerk who was going to prepare the requisition.

Q. And then what was done?

A. Then he prepared two requisitions for that material, because it would be more than \$500, each of those items, and therefore he made one requisition—

Q. What was the estimated price that he put in the requisition?

A. The estimated price I gave him was 12 cents; the estimated price he put in the requisition was 15 cents.

Q. Who was responsible for that change from 12 to 15 cents? A. Why, he prepared the requisition.

Q. Did you ever know, prior to that folder being

(Testimony of Edwin F. Meyer.)

brought into court, that change had been made from 12 to 15 cents? [914—862]

A. No, sir, I discovered it here in looking over the folders.

Q. And this memorandum that you speak of is in your handwriting? A. Yes, sir.

Q. Is there any mark or designation upon that requisition showing by whom the physical preparation was made?

A. No, sir, you would have to get the first of the requisition to show it.

Q. Sir?

A. You would have to get the first copy of the requisition to show.

Q. You can't state the person, then, who prepared it?

A. No, sir. I might say that I think it was Mr. Spaulding.

Mr. ALLEN.—You say you didn't prepare it yourself?

A. No, sir.

Q. Do you know that you didn't do that?

A. I know that I did not physically prepare it.

Mr. SHIPLEY.—That memorandum was prepared by you and turned over to the clerk under you, upon whom you relied to do the physical work, for the purpose of guiding him and giving him facts necessary to put into a requisition?

A. Yes, sir. When I would get any information over the telephone from any of the officers, or anyone connected with the naval establishment who wanted

(Testimony of Edwin F. Meyer.)

any material, I took the information down on a little pad of that kind and I turned it over at intervals to the Requisition Clerk to be put into form by him, and he would file, as a rule, those little slips in the folders.

Q. Mr. Meyer, in the preparation of that requisition, or in dictating to the clerk under you to prepare an estimate of 12 cents, were you in any conspiracy with Mr. Goldberg, Mr. Corder, Mr. Kettlewell, or any other person, with reference to this [915—863] particular purchase, or to defraud the United States Government? A. No, sir.

Q. Has the clerk who prepared that requisition and made that change from 12 to 15 cents, as you furnished it to him, to your knowledge, ever been charged or indicted for a criminal act in reference to that transaction? A. No, sir.

Q. Was the authority to make this purchase at 15 cents given by the Bureau at Washington after this requisition was prepared? A. Yes, sir.

Q. And prior to the letting of the contract and the award at the Naval Pay Office? A. Yes, sir.

Q. Now, that was when, in what month of what year?

A. That was November or December, 1907. I think the requisition is dated November.

Q. Some five or six months prior to the preparation, or causing to be prepared the requisition involved in this particular case? A. Yes, sir.

Q. Mr. Meyer, can you state to this jury at this time why you suggested the estimate of 12½ cents in this particular case?

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—438, now?

Mr. SHIPLEY.—No, to the one that is now being examined by the jury.

A. 12 cents. Well, that was the governing price locally at that time. The Naval Constructor and the Engineer Officer all made their estimates from 12 to 15 cents.

Q. Mr. Meyer, calling your attention to Defendants' "A-25," Defendants' Exhibit "A-24," requisition 170-L, series of 1910, [916—864] under date of February 25th, 1910, examine those and state what they are.

Mr. ALLEN.—Before you state that—

Mr. SHIPLEY.—Just generally, so you can see what the subject is.

Mr. ALLEN.—All right.

A. Well, it is requisition on which there are two items of zinc $\frac{1}{2}$ and $\frac{1}{4}$ inch by 24 by 28, 24 by 60, on which the estimate is $12\frac{1}{2}$ cents.

Mr. ALLEN.—That is 1910?

Mr. SHIPLEY.—1910, yes.

A. This is February, 1910, yes, sir.

Mr. SHIPLEY.—They are marked for identification.

Q. Those are all the folders that you hold in your hand? A. Naval Supply Fund Folder 170-L.

Q. Is what? A. Yard and Pay Office copy.

Q. Just state which—

A. The Pay Office copy is "A-24" and the yard copy "A-25."

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—We will offer those two exhibits in evidence.

Mr. ALLEN.—Those I have never seen. These are quite remote in regard to point of time (examining same).

Mr. MORRIS.—They relate to the zinc.

Mr. SHIPLEY.—They relate to the same class of articles, your Honor, introduced for the purpose of showing the same procedure both before and after the date of the alleged offense in other transactions, concerning which there is no complaint.

The COURT.—Let them be marked “A-105” and “A-106” and be admitted.

(Folders referred to received in evidence and marked Defendants’ Exhibits “A-105” and “A-106,” respectively.) [917—865]

Mr. SHIPLEY.—They are marked “A-24” and “A-25” for identification.

Mr. ALLEN.—I didn’t hear your Honor’s suggestion as to why they were admitted.

The COURT.—I understand they are admitted for the purpose of showing a line of conduct, that is the idea?

Mr. SHIPLEY.—And the procedure.

The COURT.—Admitted.

A. These requisitions were prepared in the Storekeeper’s office. Item 3, for 2,500 pounds, and item 5, the estimated price was 12½ cents. Purchase was made from the Great Western Smelting & Refining Company at 12½ cents.

Q. By whom were those requisitions prepared?

(Testimony of Edwin F. Meyer.)

A. In the Storekeeper's office, under my supervision.

Q. Is there anything in there showing who did the physical work on them? A. No sir.

Q. Are they initialed by the party who drew them up?

A. No, sir, these copies do not show the initial.

Mr. SHIPLEY.—Mr. Meyer, in those folders—what was the estimated price in that case?

A. 12½ cents.

Q. Who fixed that.

A. It is done in the Storekeeper's office, either by myself or—

Q. Is there anything in that folder showing any letter of endorsement or transaction with the Commandant?

Mr. MORRIS.—Look at exhibit "A-25," Mr. Meyer.

A. No, sir, there is nothing here. I have a record here which shows a note on the face in Mr. Barnes' handwriting—

Q. There is nothing further there you desire to mention? [918—866]

A. No, sir, in which he evidently begun the preparation of that requisition.

Mr. ALLEN.—Evidently begun what?

A. The necessity for the articles. I see here he has a note, "6,000 pounds received from California lasted over a year."

Q. Isn't there a letter in there regarding the necessity, or something, for that transaction that you

(Testimony of Edwin F. Meyer.)

called to my attention this morning?

A. That note there of Mr. Barnes on which he noted the fact there is no necessity for that.

Q. We don't care anything about that.

A. At the same time we were in communication with Washington, calling the Bureau's attention to the fact that local price was prohibited. That occurred just about six days prior to this requisition.

Q. Isn't there a letter in that folder calling attention to the requirement of that particular zinc for a certain ship? A. No, sir.

Q. Or if it is not here on time it would cause delay?

A. It is for repairs to "Washington" and "Tennessee," but there is no particular letter.

Q. Mr. Meyer, previous to the time of the preparation of requisition 438, covered by the indictment in this case, did the Secretary of the Navy authorize the purchase of any zinc, as shown by the records in this case?

A. Yes, sir, he had authorized the purchase of zinc prior to that time.

Q. Calling your attention to requisition 304, dated February 5th, 1908, Plaintiff's Exhibit "72" in this case. Examine the contents of that file and state the procedure that was gone through, as [919—867] shown from the files. That is an exhibit offered by the Government in this case?

A. Yes, sir. It is requisition 304, Naval Supply, for rolled sheet zinc, 15,000 pounds.

Q. What dimensions?

A. $\frac{1}{2}$ and $\frac{3}{4}$ and 1 inch by 24 by 36.

(Testimony of Edwin F. Meyer.)

Q. And that is introduced by the Government as evidence in this case?

A. Yes, sir. It shows that the requisition—

Mr. ALLEN.—How many thousand pounds is that, Mr. Meyer?

A. 15,000, sir. Dated May 5th, 1908, was approved by the Bureau of C. & R., that is, Construction and Repair at Washington, on the 13th of February.

Mr. SHIPLEY.—What year?

A. 1908. And approved by the Paymaster General of the Navy by wire on the 17th of February, 1908.

Q. And who prepared the requisition?

A. In the Storekeeper's office?

Mr. SHIPLEY.—Mr. Meyer, state the facts just as nearly as you can at this time as to the steps and proceedings in reference to the preparation of this requisition and its final proceeding through your office.

A. Well, the requisition was prepared in the requisition office of the Storekeeper and forwarded to the Bureau of Construction and Repair, the estimated price placed on it at 15 cents. That is in February, 1908. The requisition after having been approved by the Bureau of Construction and Repair and the Paymaster General, the purchase was ordered through the Purchasing Pay Officer, Seattle. The proposals were sent out under date of February 21st, and all of the bids received were forwarded to Washington, D. C. [920—868]

Q. Now, explain to the jury what you mean by

(Testimony of Edwin F. Meyer.)

that, Mr. Meyer, so they will understand what was done.

A. The Purchasing Pay Officer in the city here did not make the award without the approval of the Paymaster General and the Secretary of the Navy, therefore all the bids received by him were forwarded to the Bureau at Washington. It shows that the Paymaster General here—

Mr. ALLEN.—I object to your stating what it shows.

Mr. SHIPLEY.—Just read, Mr. Meyer.

A. (Reading:) Bureau of Supplies and Accounts, March 2d, 1908. Respectfully referred to the Bureau of Construction and Repair for recommendation and return. It is noted that all bids under this requisition must be referred to the Secretary of the Navy prior to award. E. B. Rogers, Paymaster General, U. S. Navy, Department of the Navy, Bureau of Construction and Repair, March 3d, 1908. Respectfully returned to the Bureau of Supplies and Accounts by the Department recommending that award of contract for the material required on the within referred to requisition be made to the Great Western Smelting & Refining Company, the lowest bidder, at \$1,795. Bids returned herewith. J. H. Willard, General Constructor, U. S. Navy, acting Chief of Bureau.

Q. Where was he?

A. Navy Department, Washington, D. C. Third endorsement: (Reading:) Navy Department, March 4th, 1908. Bureau of Construction and Repair. Forward bids received under Naval Supply Requisi-

(Testimony of Edwin F. Meyer.)

tion 304, Navy Yard, Puget Sound, covering rolled sheet zinc, estimated to cost \$2,250. Proposals: Great Western Smelting & Refining Company, \$1,795; American Iron & Metal Company, \$1,875; W. A. Corder & Company, \$1,875. Respectfully returned to the [921—869] Bureau of Supplies and Accounts approving the recommendation of the Bureau of Construction and Repair contained in the second endorsement hereon. In accordance therewith, the Bureau is authorized to make award of contract for the material required on Naval Supply Fund requisition number 304, Navy Yard, Puget Sound, Washington, to the Great Western Smelting & Refining Company, the lowest bidder, at \$1,795. Trueman H. Newberry, acting secretary.

Fourth endorsement: (Reading:) Bureau of Supplies and Accounts, March 5th, 1908. Bids, requisition number 304. Respectfully returned to Navy Pay Office, Seattle, with reference to the third endorsement to be complied with. E. B. Rogers, Paymaster General, U. S. Navy.

Q. What is the third endorsement to be complied with?

A. That is the endorsement of the Assistant Secretary in authorizing purchase from the Great Western Smelting & Refining Company.

Q. At what price per unit?

A. At \$11.90 per hundred.

Q. And the estimated price under the requisition was what? A. 15 cents.

Q. And these proceedings taking place in the office

(Testimony of Edwin F. Meyer.)

of the Secretary of the Navy and in the office of the Bureau of Supplies and Accounts at Washington, D. C., were in what month and what year?

A. March, 1908.

Q. This zinc was purchased, then, from whom, finally, as shown by these exhibits?

A. Great Western Smelting & Refining Company.
[922—870]

EDWIN F. MEYER on the stand, direct examination (resumed.)

(By Mr. SHIPLEY.)

Q. Handing you Plaintiff's Exhibit "79," introduced by the Government as one of its proofs in this case, I will ask you to examine that folder and see what it contains and read the contents.

A. This is requisition number 444, Naval Supply Fund, for 22,000 pounds of rolled zinc.

Mr. ALLEN.—Is that in evidence?

Mr. SHIPLEY.—Yes, one of your exhibits.

A. (Continuing.) Estimated cost, 12½ cents. The requisition was approved by the Navy Department April 10th, 1908, and was approved by the Paymaster General for the purchase through the Navy Pay Office, Seattle, Washington, on April 11th, 1908, with the notation that the bids to be referred to the Bureau for instructions as to award.

Q. Now, what does that refer to?

A. The purchase of the zinc on this requisition.

Q. What were the proposals in that case?

A. W. A. Corder Company, \$12.45 a hundred; the Fowler Metal Company, \$12.50 a hundred; P. Mc-

(Testimony of Edwin F. Meyer.)

Manus, \$12.70 a hundred; American Iron & Metal Company, \$12.75 a hundred, and the Hallidie Machinery Company, "No bid."

Q. Mr. Meyer, from an examination of the record which you now hold in your hand, can you state whether it shows there whether the award was made in the Navy Pay Office upon the receipt of the bids upon proposals in ordinary cases?

A. It was not done in that manner, sir.

Q. Well, what was done in lieu of the ordinary and regular procedure? [923—871]

A. I read from a letter here written by the Purchasing Pay Officer under date of May 6th, 1908. (Reading:) Sir: I have the honor to submit herewith for instruction as to award of bids for rolled zinc under Naval Supply Fund requisition number 444, and, as directed by the Bureau's endorsement on requisition. Respectfully, Robert H. Orr, Paymaster U. S. Navy, Purchasing Pay Officer. It is addressed to the Paymaster General, Navy Department, Washington, D. C.

Q. And from that the fact appears that these proposals, instead of being accepted and an award made, that the entire subject matter was forwarded to the Department at Washington, D. C., and with what result?

A. (Reading:) Bureau of Supplies and Accounts, May 11th, 1908. Subject: Purchasing Pay Officer, Purchasing Pay Office, Seattle, Washington. Bids received under Naval Supply Fund requisition number 444 for rolled sheet zinc respectfully submitted

(Testimony of Edwin F. Meyer.)

to the Secretary of the Navy. It is recommended that the Bureau be authorized to wire award of this zinc to the lowest bidder, the W. A. Corder Company. E. B. Rogers, Paymaster General, U. S. Navy.

Q. What was the rank of Rogers, whose name is signed to that endorsement?

A. Paymaster General, U. S. Navy. He was the Chief of the Bureau of Supplies and Accounts.

Q. He was in control of the subject matter, was he?

A. I didn't hear that.

Q. He was in control over this subject matter?

A. Yes, sir.

Q. Above any of the departments of the navy out here on this coast? A. Yes, sir. [924—872]

Q. Did your office, Paymaster Spear or yourself, personally have any authority or power to change or alter the procedure, or make anything differently done in that matter from what was directed by Paymaster Rogers? A. No, sir.

Q. Now, what does that record show was subsequently done in that case, from that record?

A. I read here from the endorsement from the Navy Department, May 12th, 1908. (Reading:) Bureau of Supplies and Accounts submits bids received under Naval Supply Fund requisition number 444, Navy Yard, Puget Sound, Washington, covering rolled sheet zinc, estimated to cost \$2,750. Proposals: W. A. Corder Company, \$2,739; Fowler Metal Company, \$2,750; P. McManus, \$2,794; American Iron & Metal Company, \$2,805.50. Respectfully returned to the Bureau of Supplies and Accounts ap-

(Testimony of Edwin F. Meyer.)

proving the recommendation of the Paymaster General contained in the first endorsement here and authorizing award in accordance therewith to W. A. Corder Company, the lowest bidder, at their bid of \$2,739, delivery within three days. Truman H. Newberry, acting Secretary.

Q. Mr. Meyer, can you state, from the examination of that record, where that requisition initiated?

A. In the Storekeeper's office, navy yard.

Q. In your department? A. Yes, sir.

Q. Can you state at this time who actually prepared that particular requisition.

A. No, sir, I cannot say where it was prepared.

Q. What is that?

A. I cannot say who the clerk was who prepared it.

Q. What was the estimate that was fixed on that requisition by your [925—873] Department?

A. 12½ cents per pound.

Q. What was the time of delivery specified in that requisition by your department?

A. Within fifteen days after the date of award.

Q. The final order allowing the purchase from Corder specified how many days for delivery?

A. Three days.

Q. And that was inserted by whose authority?

A. Purchasing Pay Officer and the Secretary of the Navy.

Q. Mr. Meyer, that requisition was initiated on what day? A. April 3d, 1908.

Q. When with reference to the initiation of the requisition 438, involved in the indictment on which

(Testimony of Edwin F. Meyer.)

you are now on trial?

A. Approximately the same time; a couple of days after.

Q. And what is the quantity of zinc called for in that purchase? A. 22,000 pounds.

Q. At the time of the preparation of that requisition, and at the time of the forwarding of the proposals for bids to the Navy Department at Washington, and the authorizing of the purchase from W. A. Corder, were you a party to any crime or combination or conspiracy with Corder or others?

A. No, sir.

Q. To defraud the Government in this transaction? A. No, sir.

Q. What are the sizes of the zinc called for? Counsel wants to know.

A. $\frac{3}{4}$, $\frac{5}{8}$ and 1 inch by 24 by 36, and 24 by 48.

Q. Mr. Meyer, can you state to this jury, from your experience and knowledge gained while in the Storekeeper's office, transactions [926—874] connected with the purchase of zinc, whether there is any difference in the price of zinc of the dimensions mentioned in this requisition than in the dimensions mentioned in requisition 438?

A. It is all a uniform price.

Q. Why is that, if you know?

A. It is the same character of supplies, merely one is cut up into smaller sizes.

Q. Mr. Meyer, calling your attention to Plaintiff's Exhibit "3," being one of the folders produced by the United States Government as evidence in this

(Testimony of Edwin F. Meyer.)

case, I will ask you to examine that folder and state, if you know, what it is?

A. It is a folder containing the papers relative to a contract number 3318, entered into by the Navy Department, Bureau of Supplies and Accounts, at Washington, with the Central Metal and Supply Company under date of February 11, 1908. It is for 50,000 pounds of boiler zinc.

Q. What dimensions?

A. That is the standard size, $1\frac{1}{2}$ by 6 by 12.

The COURT.—Has that been identified, that folder?

Mr. ALLEN.—That is in evidence, your Honor.

Mr. SHIPLEY.—That is exhibit “3,” your Honor.

Q. Mr. Meyer, the exhibit which you hold in your hand is one of the exhibits that was produced by the Government in this case? A. Yes, sir.

Q. By whom was the requisition upon which that purchase was made initiated?

A. In my office, by myself.

Q. In what form?

A. Well, the form of this requisition was a request card. It differs from any other— [927—875]

Q. Explain to the jury what you mean by that, and how that differs, if you know, in regard to other forms of requisitions.

A. That was a form brought into vogue by the Navy Department during that calendar year, I think in the year 1907, the previous year 1907. It was a form that we used only in making requisition in the

(Testimony of Edwin F. Meyer.)

Bureau for articles that were to be advertised by the Bureau. The Bureau, of course, always observed the prerogative of purchasing it in any form they saw fit, but it was a form that we used when we wanted the Bureau to consider the advertising of an article. There was only one sheet of it prepared, and there are no copies made, except the copies—the copy we keep in the office.

Q. What is the difference in the procedure in that case than in the ordinary case?

A. Well, that requisition, after being signed by the Storekeeper, goes directly to the Bureau of Supplies and Accounts, and if, after the Bureau communicated with the Technical Bureau, the article was wanted, it would be advertised, that is, printed proposals would be prepared and the dealers all over the country would be notified.

Q. Now, you call that a request card?

A. Yes, sir.

Q. When was that initiated by you?

A. December 3d. There is no record here, but I remember distinctly that it was December 3d from other records here. Mr. House, I think, has the request card. It was dated December 3d.

Q. The request card is in some other exhibit, is it?

A. Not in any other exhibit. I don't think it has been brought into court.

Q. You have seen it in Mr. House's custody?

A. Yes, sir.

Q. Recently, during the trial of this case? [928—876]

(Testimony of Edwin F. Meyer.)

A. I asked Mr. House for it when I was looking over these folders in order to get—

Q. You heard the testimony in this case of Mr. Kettlewell, during the month of October, November and December he had numerous conversations with you relative to certain purchases that were being made by Mr. Goldberg, and with reference to what you were to do in aid of the matter of getting business through the purchase of zinc there, you heard that testimony? A. Yes, sir, I did.

Q. At this time, when you initiated this purchase, did you designate or start it in a manner which made it necessary for that particular form of procedure?

A. Yes, sir, I started in the manner that the Bureau would of necessity advertise it and not be purchased from the local office.

Q. If at that time you had been in a conspiracy, such as Mr. Kettlewell has testified to, could you just as well have initiated it by an open purchase form of requisition as by request card form?

Mr. ALLEN.—I object to that as being entirely outside of the facts, your Honor, shown in this case.

The COURT.—Objection sustained.

Mr. SHIPLEY.—Exception.

Q. Mr. Meyer, state to this jury whether there was anything at that time that would have prevented your initiating this purchase under an open purchase form of requisition rather than by a request card? A. Nothing to prevent it; no, sir.

Q. Now, just explain to the jury what was done in the case of this transaction.

(Testimony of Edwin F. Meyer.)

A. The request card was dated April 3d; it was a request card number 10, calling for 50,000 pounds of rolled sheet boiler zinc [929—877] plate $1\frac{1}{2}$ by 6 by 12, the standard size, and gave the specifications, and so forth,—

Mr. ALLEN.—You said a request card dated April 3d?

A. No, December 3d. And as a delivery specification the request card required the material to be delivered in two lots. At that time we made requisitions about every six months for material and storing facilities were very limited and we couldn't take care of a very large quantity of supplies, that is, in February, or December, the year before. We figured we would only want on hand a certain quantity of supplies and I therefore stipulated on the face of that request card that it would be delivered in two installments, the first installment within forty-five days after date of contract and the second delivery within ninety days after date, in order that it might come along in intervals of about forty-five days. The Bureau, however, in placing the contract, eliminated that provision and required delivery of the entire quantity within forty-five days.

Mr. SHIPLEY.—What was done in regard to completing the purchase?

A. Well, the purchase was made and the records show—

Q. Through what instrumentality was the purchase made?

(Testimony of Edwin F. Meyer.)

A. By the Bureau, after advertisement. They advertised for it.

Q. Who did?

A. The Bureau of Supplies and Accounts, and bids to be opened at Washington on the 21st of January, that is, a month and twenty-one days after the date of the requisition, and delivery to be made on or about April 16, 1908. The materials were actually delivered, however, on the 7th of March.

Q. When? A. 7th of March. [930—878]

Q. Does that folder show the bidders?

A. No, sir; that is a matter of record in the Navy Department.

Q. Where? A. Washington, D. C.

Q. Does the Storekeeper's office, or the Navy Pay Office in Seattle, have any record of that?

A. No, sir, no record whatever.

Q. Was that a transaction subsequent to that procedure that had anything to do with these offices here?

A. No, sir. We were furnished a copy of the contract which the Navy Department entered into with the contractor.

Q. Well, we haven't got up to the contract yet. Now, to whom was the award made and the contract entered into in that case?

A. Central Metal & Supply Company. They are people in the—

Q. Where are they located?

A. They have offices on Lombard Street in Balti-

(Testimony of Edwin F. Meyer.)

more; they handle the output of the factory in the middle west.

Q. And you say after this contract was made then a copy of that was retained in the Storekeeper's office at Bremerton? A. Yes, sir.

Mr. ALLEN.—Now, your Honor, let him testify; don't ask him—

Mr. SHIPLEY.—I ask him if he did testify to that?

A. A contract was entered into and a copy of it furnished for information of the Storekeeper.

Q. Then what was done in the Storekeeper's office with reference to that?

A. Well, they filed the contract and prepared a due card, that is, a card showing the date on which this material would be due from the contractor.
[931—879]

Q. Now, Mr. Meyer, you testified to purchases made through the direction of the Secretary of the Navy and of the Department of Supplies and Accounts upon requisition initiated in February, and one in April, 1908, in which the purchase price of zinc was from 11 to 12 cents per pound. I would ask you what date these transactions last referred to were conducted through the departments at Washington with reference to the one which you now hold in your hand.

A. Both of those were subsequent to this date here. The contract was entered into here February 26th.

Q. The transactions in reference to the one you

(Testimony of Edwin F. Meyer.)

now hold in your hand were then shown upon the records of the Department in Washington at the time these two subsequent ones were initiated and passed through the same department?

Mr. SHIPLEY.—Mr. Meyer, the folders introduced in evidence as Plaintiff's Exhibits "79" and Plaintiff's Exhibit "72," which you previously examined, each show the date, do they not, of the different transactions with reference to the subject matter contained both under the supervision of the Secretary of the Navy and in the Bureau of Supplies and Accounts, Washington, D. C.?

A. They show the dates, yes, sir.

Q. The folder which you now hold in your hand show dates in which this transaction passed through the Department or Bureau of Supplies and Accounts at Washington, D. C., does it?

A. It does, yes, sir.

Q. And those dates are as stated by you in your previous testimony to the jury? A. Yes, sir.

Q. Those records also show?

Mr. ALLEN.—Which ones? [932—880]

Mr. SHIPLEY.—The three he is now testifying concerning also show the estimated price and the contract price in each instance, do they not?

Mr. ALLEN.—Are you asking as to the copy on file at Bremerton?

Mr. SHIPLEY.—I am asking from the files as disclosed in Plaintiff's Exhibit "72," those being requisition 304, by exhibit "79," being requisition 444, and the exhibit "3," being contract number 8318, all

(Testimony of Edwin F. Meyer.)

introduced in this case by the Government, concerning the contents of which folder this witness has just been examined, whether they each show the respective estimated price and contract price at which the goods were purchased?

Mr. ALLEN.—Just a moment, your Honor. I object to the form of that question as being—the witness being disqualified to state as to what the record at Washington shows, unless we have that instrument here before us. He doesn't know what that record shows, and the question of counsel is sufficiently broad to include that, or this one here, or the one across the Sound, and I submit, your Honor, he should confine his inquiry to one particular place or the other.

The COURT.—I understand it is confined to these folders?

Mr. SHIPLEY.—Yes, your Honor. Of course, I could hand him each one separately, but I have simply combined the three in one.

The COURT.—Let him answer.

A. Exhibit “72” and “79” show the estimate and the contract price, but the estimate is not in this contract here for the reason that the request card upon which this was based is absent.

Mr. SHIPLEY.—Oh, I see. But is the contract price shown in there?

A. The contract price is shown here.

Q. And the date?

A. And the date, yes, sir. [933—881]

Mr. SHIPLEY.—We would like to have Mr.

(Testimony of Edwin F. Meyer.)

House produce the card, the request card. The witness said he saw it in Mr. House's possession the other day.

The COURT.—Proceed.

Mr. ALLEN.—I will see if I can get it.

Mr. SHIPLEY.—The request card which initiated this purchase under contract 8318, Plaintiff's Exhibit "83."

The WITNESS.—Number 10 is that card.

Mr. ALLEN.—That is the number of the card, Mr. Meyer?

A. Number of the card, yes, sir.

Mr. SHIPLEY.—Mr. Meyer, what was the purpose of the accumulation of the stock which is covered by the contract disclosed or contained in the folder which you now hold in your hand?

A. It was for issue to the ships which we had at the yard and which we had in the vicinity of the navy yard.

Q. What ships particularly, if any?

A. The Pacific Fleet is the only vessels we had there. We had previously been receiving requisitions—

A. We had previously been receiving requisitions for large quantities of zinc during the fall of 1907. These requisitions were covered by local purchases in quantities ranging from three to four thousand pounds each. This requisition was initiated for the purpose of buying a large quantity of zinc for the purpose of keeping in stock and issuing to these ships as called for in lots of from three to seven thou-

(Testimony of Edwin F. Meyer.)

sand pounds, which they were asking for about that time.

Q. Each vessel? A. Each vessel, yes, sir.

Q. At that time did you know of the intended arrival of the battleship fleet, generally referred to as the Atlantic Fleet, and the [934—882] necessity of outfitting them? A. No, sir.

Q. At the time this contract was initiated in December? A. I did not know it, sir.

Q. Mr. Meyer, examine the card which I now hand you and state to the jury whether or not you know what it is.

A. Yes, sir. Request card for boiler zinc prepared in the office of the Storekeeper.

Q. Is that the card to which you have referred in your previous testimony?

A. Yes, sir, that contract was based upon this call.

Q. That is the contract in the folder which you have just been testifying concerning was based upon this card?

A. This call, yes, sir, this card.

Q. This was from the files of the Storekeeper's office, was it, Mr. Meyer? A. Yes, sir.

Mr. ALLEN.—That is it, is it, Mr. House?

Mr. HOUSE.—Yes.

Mr. ALLEN.—You offer it in evidence?

Mr. SHIPLEY.—Yes.

Mr. ALLEN.—No objection.

Mr. SHIPLEY.—We offer this card in evidence, your Honor.

Mr. ALLEN.—Do you want to put it in as part of

(Testimony of Edwin F. Meyer.)

that folder or put it in separate?

Mr. SHIPLEY.—Mr. House, does this belong in that folder?

Mr. HOUSE.—No, it is a separate file.

Mr. SHIPLEY.—Possibly it might be easier to keep from losing it—

The COURT.—Better put it in that folder. [935—883]

Mr. ALLEN.—We have no objection.

The COURT.—It belongs in there.

Mr. SHIPLEY.—No, your Honor, it doesn't, but it is so small it might get lost.

The COURT.—Very well, put it in the folder.

Mr. SHIPLEY.—Let the record show this request card is placed in the folder. Mark the request card—Government's Exhibit "3."

The COURT.—Better mark it "3" also.

Mr. SHIPLEY.—Let the record show "3-A" is one of the contents of Plaintiff's Exhibit "3."

(Paper referred to received in evidence and marked Plaintiff's Exhibit "3-A.")

Mr. SHIPLEY.—Mr. Meyer, read that card to the jury.

Mr. ALLEN.—I ask you to read it to the jury.

Mr. SHIPLEY.—Why, if it will accommodate counsel any better I will read it. I am not particularly struck on hearing the sound of my voice. (Reading:) December 3d, 1907. Left-hand corner, 124, Naval Supply Fund, request number blank.

Q. Does this mean—

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Well, I don't want his construction of it.

Mr. SHIPLEY.—Well, he is familiar with it and I am not. There is an obliteration here.

Mr. ALLEN.—That is to be delivered at the Puget Sound Navy Yard.

Mr. SHIPLEY.—It should be "To be delivered at the Navy Yard, Puget Sound, Washington, within ten days as noted. Quantity, 5,000 pounds."

A. That is not within ten days, I don't think.

Mr. ALLEN.—It so reads, anyhow.

Q. No, sir, it does not. Request number ten.

Mr. SHIPLEY.—That is the number of the request. Within blank days. [936—884] This ten, is that the number of the card?

A. This was a carbon copy and the ten should be on that line (showing).

Mr. ALLEN.—Well, I object to any statement to what it should be. It stands there so it can be read anyway.

The COURT.—Read it.

Mr. SHIPLEY.—Mr. Meyer, you are familiar with this card?

A. Quite familiar, yes, sir.

Q. And the ten below the line is caused by the dropping of the lower sheet on that corner (showing)?

Mr. SHIPLEY.—(Reading:) Within blank days after date of contract or Bureau order. Quantity, 5,000 pounds. Article, rolled sheet boiler zinc, 12 inches by 6 inches by 11½, to be in accordance with

(Testimony of Edwin F. Meyer.)

specifications 21-Z-2, and to be delivered at the navy yard, Puget Sound, Washington, in carload lots in two installments; first delivery to be made within forty-five days after date of contract; second delivery within ninety days after date of contract. Schedule number 668, open January 21st, 1908; contract number 8318; date, April 16, 1908 beneath.

Q. Mr. Meyer, I will ask you if you dictated that card?

Mr. ALLEN.—Let the jury see that card.

Mr. SHIPLEY.—I will let them see it when I get ready.

A. I did, yes, sir.

Q. Is this the original or a copy?

A. It is the copy, sir.

Q. What became of the original of this card, if you know?

A. Forwarded to the Bureau of Supplies and Accounts, Washington, D. C.

Q. Is this a carbon copy of the original that was forwarded to Washington? [937—885]

A. Yes, sir.

Q. Calling your attention to the figure 10 at the top of that card, I will ask you if you know to what that refers and what it is?

A. It is the request number, sir, the number of the paper.

Q. How do you know that?

A. Because I made it out and that is the way it is. Here is the request number here (showing) 10, corresponding to that.

(Testimony of Edwin F. Meyer.)

Q. Referring to the folder, does the request number on the folder correspond with the number 10 on the carbon copy of the card?

Mr. ALLEN.—He has just testified to that, I submit.

A. It does.

Mr. SHIPLEY.—Mr. Meyer, at the date that that request card was prepared, what, if any, knowledge did you have concerning the necessity in the near future of outfitting or furnishing with supplies the Atlantic Squadron or battleship fleet at the Puget Sound Navy Yard?

Mr. ALLEN.—Object to that for the reason, your Honor, it is a repetition, the question having been asked the witness no more than ten minutes ago.

Mr. SHIPLEY.—I withdrew the question, your Honor, because this card hadn't been here.

The COURT.—Let him answer.

A. I do not know anything about it, sir.

Mr. SHIPLEY.—What date, with reference to the making out of that card, did you first know or have knowledge in your capacity as a clerk in the General Storekeeper's office of the necessity of outfitting the Atlantic Squadron from the navy yard of Puget Sound? [938—886]

A. It was during the month of March, I think, sir; I am not sure.

Q. State what was done by you and under your supervision towards making provision for the outfitting and supplying the battleship squadron subsequent to this time.

(Testimony of Edwin F. Meyer.)

A. Well, just as soon as we learned that eight of the vessels would come to Puget Sound to be outfitted with supplies, Paymaster Spear instructed me to get busy and prepare requisitions anticipating their requirements, and, pursuant to that, I began the preparation of requisitions for the various items that might be called for by the ships.

Q. Did you have any conference with Paymaster Spear, your superior, concerning those matters?

A. Very frequent conferences, sir.

Q. About when, as near as you now remember?

A. From the records here, I think it was about March, the latter part of March.

Q. Mr. Meyer, you heard the testimony of Mr. Kettlewell on the witness-stand in this case in which he related to this jury, or attempted to, facts which he claimed, occurred, or conversations which he claimed occurred between yourself and him with reference to the putting over of a large requisition for zinc in the month of January, early part of January, 1908. State to the jury whether or not that statement is true or false.

A. That statement is false, for the reason that I did not know in January that a requisition would be submitted for zinc for the battleships. I did not—

Q. Did you, during the month of January, have any knowledge of the intention to outfit and supply the Atlantic Battleship Squadron at your station?
[939—887] A. No, sir, I did not know.

Q. And that fact was not brought to your knowledge, you said, until about the middle of March?

(Testimony of Edwin F. Meyer.)

A. The latter part of March, from the records.

Q. And it was then brought to your attention by your superior, Mr. Spear? A. Yes, sir.

Mr. SHIPLEY.—Mr. Meyer, Mr. Spear you referred to as the gentleman from whom you received the instructions and had these conversations, that is Paymaster Spear sitting here in the courtroom?

A. Yes, sir.

Q. Mr. Meyer, did you take any action upon the instructions given you by Paymaster Spear looking toward the preparation to meet the requirements of the Atlantic Squadron?

A. I immediately began the preparation of numerous requisitions for large quantities of supplies in anticipation of the requisitions from those ships.

Q. Just state, now, what was done fully to the jury and describe the facts and conditions just as they existed there at that time so they will know.

A. Well, we took up the question of estimating the probable requirements of those vessels—

Mr. ALLEN.—You say “we.” Who do you mean now?

A. Paymaster Spear and myself, and the other clerks in the office assisted.

Mr. ALLEN.—I see.

A. (Continuing.) In the question of provisions, that was about the first thing we took up. Then requests for clothing and small stores, then paints and oils, and metals and hardware, and articles [940—888] of every description of that kind that would probably be required by those vessels.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—You heard the testimony of Paymaster Spear that the necessity required the stocking up of very nearly every article that is used in the commercial world?

A. Yes, sir.

Q. State what the facts are of your own knowledge in that regard? A. As to the variety of articles?

Q. Yes.

A. The scope is exceedingly broad. It covers almost every conceivable article that is used generally. At that time we had thirty-two classes of naval supplies, beginning with class 1. We had anchors and chains; and, two, electrical goods of every description, running up into five, bolts and nuts of every description; brushes, cordage, drygoods, fuel,—

Mr. SHIPLEY.—Mr. Meyer, state what was done from that time on in regard to the preparation of requisitions and the fixing of—

Mr. ALLEN.—From what time on?

Mr. SHIPLEY.—From the latter part of March up to the month of April and during the month of April?

A. Well, requisitions, numerous requisitions, were submitted about that time in anticipation of these needs.

Q. Covering this entire vast area of different character of supplies?

A. Yes, sir. They all called for comparatively short delivery, from fifteen to twenty-five days delivery.

Q. What was the fact in regard to the necessity of

(Testimony of Edwin F. Meyer.)

making estimates as to the price and gathering information? Who had that work to do?

A. Oh, I had it to do, with an assistant. [941—889]

Q. Mr. Meyer, when were these different requisitions, or this innumerable quantity and character of articles being prepared and issued with reference to the preparation and issuance of requisition 438 for the purpose of the 50,000 pounds of zinc in question in this case?

A. On or about the same time, from the 25th or 30th of March until the latter part of April, we continued to submit requisitions, even into June, after the ships were actually here. Some of the items we did not anticipate.

Q. Mr. Meyer, state what the fact was as to whether or not these numerous requisitions called for the signature of Paymaster Spear, the approval of the Paymaster General and the Secretary of the Navy?

A. Well, no, a requisition doesn't become a requisition until after it is signed by the Storekeeper; that is, it is simply a piece of paper until he signs it and then it is a requisition. The Paymaster General of necessity has to approve all purchases before anyone would act upon it. The Secretary of the Navy would have to approve any purchase over \$500, that is, if the material was not to be advertised.

Q. And under what circumstances was the formality of advertising dispensed with?

A. In case of exigencies.

(Testimony of Edwin F. Meyer.)

Q. What do you mean by an exigency in that connection?

A. Where a condition such as existed at that time, where the ships would be at the navy yard, we estimated about May 15th. These requisitions were prepared along about April 1st. Under advertisement it would ordinarily take from four to six months to get it. It would be impossible to obtain these materials or to receive them at the navy yard within—before the battleships [942—890] left, therefore, waiving all advertising, was an exigency, and it was absolutely necessary.

Q. Mr. Meyer, how long did it take to deliver the 50,000 pounds of zinc that was requisitioned for under requisition 438 from the first of April, how long after the first of April?

A. May 9th delivery was made at the navy yard, sir.

Q. How long did it require to make the delivery under the contract that was initiated by the request card dated December 3d, 1907? A. Three months.

Mr. ALLEN.—How long from the time of the purchase of the award?

Mr. SHIPLEY.—From the time of the date of the card.

A. Three months after the date of the requisition, after it was prepared.

Q. One instance was three months and the other from the first of April till, you say, the 10th of May?

A. Yes, sir, 9th of May.

Mr. ALLEN.—Now, I object to that.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—In the latter case, where the delivery was made at the expiration of the period ending May 10th, was advertising dispensed with by the Secretary of the Navy?

A. Yes, sir, he waived it, the request of the Storekeeper.

Mr. ALLEN.—Request of the Storekeeper, you say?

A. Yes, sir.

Mr. SHIPLEY.—Mr. Meyer, when was it with reference to the issuance of the request card dated December 3d, 1907, that the battleship fleet, the Atlantic Squadron, arrived on the waters of Puget Sound?

A. They arrived during May, from the middle of May on, 1908.

Q. How long after the initiation of the requisition 438?

A. They arrived about six weeks after. [943—891]

Mr. ALLEN.—Will you ask him to state the ships?

Mr. SHIPLEY.—What ships do you refer to?

A. Battleships, some of the battleships.

Mr. ALLEN.—What ships?

Mr. SHIPLEY.—Just give Mr. Allen, he would like to know the names of some of those ships.

A. Well, the records would show that.

Q. Well, do you know the names of some of them?

A. "Rhode Island," "New Jersey,"—

Mr. ALLEN.—Tell me when they arrived.

Mr. SHIPLEY.—You referred to the sending out a wireless telegram. When was that?

(Testimony of Edwin F. Meyer.)

A. That was during the latter part of April or May, I think.

Q. And for what purpose?

A. Purpose of getting requisitions which we hadn't received and expected.

Q. What do you mean by getting requisitions? Explain to the jury so they will know.

A. These ships' requisitions from the various vessels of the battleship fleet. They were supposed to be furnished with supplies at Puget Sound. We couldn't furnish them with supplies without receiving requisitions from them, and we wanted to know what the articles were in order that we might assemble them for the vessels.

Q. Now, prior to that time state what information you had had in regard to a number of the battleships coming here to be supplied?

A. Well, we were told that there were sixteen battleships in the Atlantic Battleship Squadron. Eight of them would be outfitted at the Puget Sound Navy Yard, that is, we were to take care of eight of those ships, we were to furnish them with what supplies [944—892] they needed for a cruise around the world.

Q. And did that information convey definite knowledge as to the identical ship, or simply that they were to be eight in number?

A. That information gave the name of the ship.

Q. At the time you received that information and acquired the knowledge that it would be necessary to be prepared to outfit them, did you have any definite

(Testimony of Edwin F. Meyer.)

knowledge as to the particular requirements that each ship would requisition for?

A. No, sir, we hadn't.

Q. And was it for the purpose of attempting to attain that knowledge that these wireless telegrams were sent?

A. Yes, sir. We knew in a general way about what they might call for, because the allowance book gives six months' allowance of these vessels, and we could, by reference to those allowance books, tell about what they would probably require.

Q. Was that a definite means of knowledge, or merely an assistance to aid you in anticipation?

A. It was a guide, it wasn't definite. The ships frequently required more or less of the allowance.

Q. How did you determine the quantity of any article that would probably be required by these eight battleships?

A. I would either take the allowance of one ship, or the probable requirements of one vessel and multiply it by eight or ten, as the case may be. I multiplied by ten in this case, I think. When I say this case, I mean the case of the battleships.

Q. Why did you do that?

A. Because there were eight vessels in the fleet, and we were expected to outfit them, and there were a large number of other vessels in the harbor, and they were calling for supplies, and if there was a surplus it wouldn't make very much difference, because [945—893] there should be a stock on hand at the navy yard anyway.

(Testimony of Edwin F. Meyer.)

Q. What would have been the difference if there had been a deficiency if you know?

Mr. ALLEN.—Now, just a moment. That is the same question I asked him yesterday, and I object because this man is not a skilled navigator, he is not an engineer in the navy, not a man qualified in any respect any more than I am to state the effect if a battleship went out of here without proper zinc. As a matter of fact, your Honor, there is a great deal of doubt in naval circles whether this zinc is of any use for the purpose for which they use it.

The COURT.—I think the objection should be sustained. He doesn't know.

Mr. SHIPLEY.—Mr. Meyer, it was your duty to prepare these requisitions, among other things?

A. It was, sir.

Q. Note an exception to the last ruling of the Court. It was your duty to anticipate possible requirements and the necessity? A. Yes, sir.

Q. It was your duty, among other things, to place in these requisitions a quantity which would afford a sufficient supply? A. Yes, sir.

Q. For the requirement? A. Yes, sir.

Q. If, in preparing these requisitions, you had failed to requisition for a sufficient supply what would have been the result, so far as you were concerned, to the department of which you were a clerk?

Mr. ALLEN.—Just a minute. I object to it on the ground it is immaterial, irrelevant and incompetent, that this man made a numerous number of requisitions there. He didn't lose his job because

(Testimony of Edwin F. Meyer.)

they didn't have any particular kind of material on hand, and that [946—894] this is all speculation, as to what would have happened to him in any event.

The COURT.—He may answer as to what would be the effect upon him.

A. Well, inquiries would have been made of me concerning not having these articles on hand, and not having requisitioned for them. I would have been called to give a reasonable excuse for my failure to make provisions for them.

Mr. SHIPLEY.—Mr. Meyer, were you ever called to account or required to make any explanation for the failure to supply or keep on hand a sufficient supply? A. Quite frequently, sir.

Q. Were you ever called on the carpet or criticised for having a sufficient amount on hand or an over-supply?

A. Well, if there was a large excess I may have been asked to explain why it was. If there was a liberal quantity, however, it was conceded to be the proper thing to have on hand.

Q. Were you called upon to make such explanation by any of your superior officers in regard to this purchase of 50,000 pounds of zinc? A. No, sir.

Q. Were you ever called upon to account for your reason for placing estimates too low and thereby causing a delay in the furnishing of supplies to ships?

A. Yes, sir.

Q. By whom?

A. The Storekeepers at the yard, Mr. Spear and Mr. Brown.

(Testimony of Edwin F. Meyer.)

Q. Were you ever criticised or *call* to account because of assembling them too soon? A. No, sir.

Q. Mr. Meyer, you are familiar with the regulations of the United [947—895] States Navy Yard?

A. Somewhat.

Q. I will hand the witness Defendants' Exhibit "1." Calling your attention to section 900, page 211, I ask you to read subdivisions 1 and 2.

The COURT.—Of exhibit what?

Mr. SHIPLEY.—Defendants' Exhibit "1," your Honor.

The COURT.—That is the regulations of 1908.

A. These were not in force at the time that requisition was prepared.

The COURT.—Exhibit "1" is regulations of 1909 in effect 1908.

A. That other exhibit is the one.

Mr. SHIPLEY.—It has the reference to zinc, the necessity of zinc and the purposes of it.

Mr. ALLEN.—Will you read it?

Mr. MORRIS.—Let Mr. Meyer read it, he is the witness.

Mr. ALLEN.—I will stand here and see what he reads.

Mr. SHIPLEY.—Sure you can. There is no objection.

A. (Reading:) "Article 900, paragraph one: Special mention shall be made in the quarterly report of the condition *of the condition* of the boilers and the means which have been employed for their preservation.

(Testimony of Edwin F. Meyer.)

Paragraph 2: Zinc slabs shall be located in such parts of the boilers as may be directed by the Bureau of Steam Engineering. The senior engineer officer, immediately on inspection of the boilers, shall examine these zincs and note their condition in the log. Special care must be taken to insure perfect metallic contact between the zincs or sets of plates of the boiler by filing over the surface of the bolts for holding the bolt plates where these are in contact with the boiler material and the zinc. After the [948—896] zincs are secured in place the outside of the joints shall be made water-tight by cement.

Article 3: Slabs of rolled zinc shall be used, these being renewed as soon as the exposed surface is reduced by oxidation to about one-half the original area. Zincs that have become bent or distorted should, however, be removed at once as inefficient. Worn and defective zincs shall not be—”

Mr. SHIPLEY.—In making your requisitions by anticipating the probable requirement of the vessels, was it necessary to take into consideration the total number of ships?

A. Yes, sir, the probable number we had to outfit.

Q. To illustrate the matter concerning which you are just testifying, I will ask you to examine this folder, which is marked Defendants' Exhibit “A-49.” This was for identification, wasn't it? State what that is, first?

A. Exhibit “A-49” is contract 7,104, Schwa-

(Testimony of Edwin F. Meyer.)

bacher Brothers Company, Seattle, Washington.

Q. What date?

Mr. ALLEN.—Is that offered in evidence?

Mr. SHIPLEY.—It hasn't been offered yet. I want to get the data to show what is offered.

Mr. ALLEN.—What is the date?

Mr. SHIPLEY.—I will get it in, if you will let me alone.

A. October 15th, 1907, is the date of the contract.

Q. This contract was for the purchasing of what class of material for what particular purposes?

A. Well, it is annual contracts made to supply certain items of provisions during the fiscal year 1908.

Mr. SHIPLEY.—We want to offer this, your Honor, merely for the purpose of illustrating the method of arriving at the necessities of [949—897] ships, and what considerations were borne in mind by the officers of the Navy Department in arriving at the result, corroboration of the testimony that the witness has just given.

(Papers referred to received in evidence and marked Defendants' Exhibit "A-49.")

Mr. SHIPLEY.—Mr. Meyer, examine this folder and call the attention of the jury to such portions of that as bear upon this subject.

A. I am reading from a letter from the Storekeeper dated April 3d, 1908, to the contractor here, the provision contractor for that year. This is to Schwabacher Brothers, Company, 300 Occidental Avenue, Seattle, Washington: "I am just in receipt of information that the U. S. S.—" Well, the first

(Testimony of Edwin F. Meyer.)

paragraph there, I better read that too— “Refer-
ring to my letter of the 27th ult., Number 17,104, or-
dering 100,000 pounds of flour, in accordance with
specifications to be delivered on or before Decem-
ber 10th, please increase the quantity called for to
175,000. I am just in receipt of information that
the U. S. S. Maine will require about 60,000 pounds
of flour when about to leave this yard for a return
cruise.”

Mr. ALLEN.—I call your attention to those nota-
tions (showing).

A. *This* notations were made after this letter was
written.

Mr. ALLEN.—I submit, if he reads this in evi-
dence he should read every notation.

The COURT.—Yes.

A. (Reading notations and balance of letter.)

Mr. SHIPLEY.—Mr. Meyer, are the vessels re-
ferred to in that letter the vessels which you have
spoken to the jury of under the designation of the
Atlantic Battleship Fleet?

A. Yes, sir.

Q. And the reference in the letter “having just
received [950—898] information concerning the
Maine,” to what does that relate?

Mr. ALLEN.—Now, I object to that, your Honor.
That is leading, to have this man read into that let-
ter a conclusion which isn’t in the letter. The let-
ter speaks for itself. This man didn’t write the let-
ter so far as I know, and I submit that he hasn’t any
right to read into communications which do speak in

(Testimony of Edwin F. Meyer.)

their own way something which serves his particular purpose.

A. I wrote the letter.

Q. You dictated that letter yourself?

A. Yes, sir.

Mr. SHIPLEY.—The question which I asked, what the reference is, to what the name is there, “Just having received information concerning the ‘Maine.’ ”

A. Well, it doesn’t show here in what form that information is. It is some other folder of that office.

Q. Is that shown in this folder (showing)?

A. No, sir.

Q. Is there some other folder in which that is shown?

A. The “Maine” requisition for provisions would show that, I think.

Mr. MORRIS.—Mr. Kerr will get it.

A. No, sir, that hasn’t been brought over here at all.

Mr. SHIPLEY.—Is that one of the requisitions you have asked for in this case?

A. No, sir, didn’t inquire for it.

Q. The “Maine” was what?

A. A battleship,—a member of the Atlantic Battleship Squadron.

Q. Was that ship on the waters of Puget Sound at the time that letter was written? A. No, sir.

Q. Of what fleet was she a member? [951—899]

A. Atlantic Battleship Squadron.

(Testimony of Edwin F. Meyer.)

Q. Do you know what the source of the information was that is referred to in that letter?

A. Information from the "Maine." I don't know just what form it was in.

Q. You have no present memory of that?

A. No, sir.

Q. Now, do you know when the "Maine" arrived with reference to that date?

A. No, sir. Sometime after the middle of May. I don't know as to the date of arrival of the respective ships.

Q. Mr. Meyer, calling your attention to Plaintiff's Exhibit "11" in this case, documents introduced by the Government, I will ask you to examine those papers for the purpose of refreshing your memory, and ask you, if you can, to state from those papers the date of the arrival of the "Maine"?

A. This is a record that is not—doesn't belong to the Storekeeper's office; record of the Commandant's office. I can read from here the date of arrival of these ships.

Mr. SHIPLEY.—What is the date of the arrival of the "Maine"?

Mr. ALLEN.—Your Honor, the record speaks for itself. If that is in evidence the jury could see it.

Mr. SHIPLEY.—What is the date on that showing the arrival of the "Maine"?

A. The "Maine" was one of the vessels that did not come.

Mr. SHIPLEY.—Didn't the "Maine" come, as a matter of fact?

(Testimony of Edwin F. Meyer.)

A. It may not have. The "Maine" and the "Alabama" was docked at Hunter's Point. The ships were changed by a subsequent order.

Q. Speak louder.

A. The destination of the ships that were to arrive at Puget Sound [952—900] was changed later and three ships substituted for the three that were intended to come here in the first place.

Q. And at the time this letter was written in April, you were anticipating that the "Maine" would be one of the ships that would be supplied at this station? A. Yes, sir.

Q. And this requisition for the purpose of this 600,000 pounds of flour, or thereabouts, was made to supply what anticipated demand?

A. Battleship fleet, the vessels of—

Q. What number of ships?

A. Eight, there were eight coming. We made a computation on the basis of ten in order to have a surplus.

Mr. SHIPLEY.—Mr. Meyer, I will ask you this question: What is the date of the preparation of the requisition for the purchase of the 50,000 pounds of zinc, says, compared to the date of the requisition for this large quantity of flour for eight battleships that were expected?

Mr. SHIPLEY.—I will ask you this question, Mr. Meyer, whether or not the motives which inspired the preparation of this requisition for flour were the same motives that inspired the preparation of requisition 438?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, I was carried by exactly the same motives.

Mr. SHIPLEY.—At that time were you engaged in any conspiracy with the Schwabacher Company to defraud the United States Government out of this flour contract?

Mr. ALLEN.—Object to that as immaterial, incompetent and irrelevant.

The COURT.—Objection sustained.

Mr. SHIPLEY.—Exception. [953—901]

Q. Mr. Meyer, showing you Plaintiff's Exhibit "8," this zinc stock card offered in evidence by the Government, I will ask you if that is the card concerning which the witness Lockwood testified?

A. It is, yes, sir.

Q. Do you find on the card the item showing "limit of stock," or "minimum of stock," whichever it is, "4,000 pounds."

A. Limit of stock, 4,000 pounds, yes, sir.

Q. Explain fully to the jury what that means and what purpose that subserves.

A. Limit of stock—this card is kept with the material in the navy yard, that is, where the material is stored; this card is placed there for convenience of determining the quantity on hand, and so forth. And on each of these cards in store there is placed this stamp "Limit of stock," and there is inserted the minimum quantity; that is, when the stock reaches that minimum the storeman should notify the requisition office that the stock has reached that minimum and it should be replenished, and there-

(Testimony of Edwin F. Meyer.)

upon the requisition office would prepare a requisition to replenish that stock. That was the idea of the minimum.

Q. State whether or not that quantity placed on that card was, to any intents and purposes, to serve as a maximum? A. No, sir.

Q. What was the fact as to whether or not that specification of 4,000 pounds afforded any limitation to the quantity which might be purchased or carried in stock?

A. That had no bearing on it whatever, on the quantity. The quantity was determined by the probable requirement, probable call.

Q. Now, to what date does that card relate, what period of time, I mean? [954—902]

A. March 3d, 1908, is the first date here—no, December 30th, 1907, is the first date, sir.

Q. Covers the period from December what date?

A. 30th, 1907.

Q. To what date? A. October 9th, 1908.

Q. Can you tell, or do you have any way of knowing at what time or period that limit, that minimum limit of stock of 4,000 was put on there?

A. No, sir.

Q. I will ask you whether you know whether or not the quantity of 4,000 pounds was a reasonable limit of stock during the period of April, May and June, 1908, under the conditions that existed at the Puget Sound Navy Yard during those three months?

A. That minimum would be ridiculous at any point, sir.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Ridiculous, you say?

A. Yes, sir, ridiculous.

Mr. SHIPLEY.—Why?

A. Too low, absurd; one ship would take over 5,000 pounds, and it would take months to replenish the stock; it therefore follows that a minimum of 4,000 pounds would be ridiculous.

Q. Did that card at that time impose any limitations upon you or your authority in the preparation of requisitions?

A. Absolutely no, sir; I paid no attention to that at all.

Mr. ALLEN.—You paid no attention to it?

A. Paid no attention to it, no, sir.

Mr. SHIPLEY.—Were you required, under the practice and regulations of the Storekeeper's office, to be controlled by any minimum as shown on that card at that time?

A. Not under the circumstances existing at that time, no, sir. [955—903]

Q. Did you confer with the storeman who had charge, or warehouseman, when you were initiating requisitions, as to the probable requirements of the battleship fleet? A. No, sir, I did not.

Q. Was it your duty to have done so?

A. No, sir.

Q. You heard the question propounded by Mr. Riddell, I believe, to Mr. Lockwood, in which Mr. Lockwood was asked if he had been consulted by you at that time in the preparation of this requisition for 50,000 pounds? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. You heard that testimony? A. Yes, sir.

Q. Was it any part of your duty to consult Mr. Lockwood, or your then warehouseman in the Storekeeper's office as to the amount of zinc you should requisition for the coming battleship fleet?

A. No, sir.

Q. Showing the witness Plaintiff's Exhibit "5," the photographic copy of requisition 438, Mr. Meyer, that requisition bears upon its face some writing in regard to advertising. To begin with, that is the requisition involved in this indictment in which you are standing trial? A. Yes, sir.

Q. For the purchase of 50,000 pounds of zinc?

A. Yes, sir.

Q. Calling your attention to some writing on the face of that requisition in relation to advertising, read that paragraph.

A. "Required"—meaning the 50,000 pounds of zinc—"to fill requisitions from the Atlantic Battleship Squadron. Request the waiving of advertisement and purchase through the Navy Pay Office, [956—904] Seattle, Washington."

Q. For what purpose was that paragraph inserted in that requisition?

A. This is my handwriting, sir.

Q. Sir? A. This is my handwriting.

Q. In your handwriting. For what purpose was it placed there?

A. In order to call the officers' attention to the fact that this was a requisition to fill the requirements of the battleship fleet, and asking, in view

(Testimony of Edwin F. Meyer.)

of its being in excess of \$500, that the formality of advertising it be waived on account of this exigency.

Q. And that was written on there at what time?

A. After the preparation of the requisition.

Q. And when with reference to its signature by Paymaster Spear? A. Prior to his signature.

Mr. SCHLESINGER.—You say prior to his signature?

A. Prior to his signature. The requisition, after being prepared, was placed on my desk. Appreciating the urgency, the exigency, I inserted that in my handwriting and put it on his desk.

Mr. SHIPLEY.—In connection with that same exhibit I hand you Defendants' Exhibit "A-13," open purchase requisition 490, series of 1908, and I will ask you what date that requisition 490 was prepared?

A. April 15, 1908.

Q. And by whom?

A. By the General Storekeeper's requisition office.

Q. For what purposes?

A. For stock, Atlantic Battleship Squadron.

Q. Calling your attention to the face of that—

Mr. ALLEN.—Is that in evidence now? [957—905]

Mr. SHIPLEY.—I don't know. I assumed it was on account of its being marked as it is.

Mr. ALLEN.—We move to strike that out until it is.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—This is one of the Storekeeper's files?

A. Yes.

Mr. SHIPLEY.—We will offer this in evidence.

The COURT.—Received.

(Papers referred to received in evidence and marked Defendants' Exhibit "A-13.")

Mr. SHIPLEY.—When, with reference to the preparation of requisition 438, was the requisition which I have just handed you prepared?

A. Fifteen days later?

Q. Was that prepared in anticipation of any requirement, and if so, what?

A. In anticipation of the requirements of the Atlantic Battleship Squadron.

Q. Is there anything on that requisition showing the purposes for which it is prepared?

A. Yes, sir, there is my writing there.

Q. Read the writing to which you refer, and state what kind of ink it is written in.

A. In red ink, "Required for issue to the Atlantic Battleship Squadron; request waiving of advertisement?"

Q. Compare the requisition in the particulars you have just mentioned with requisition 438.

Mr. ALLEN.—In what way?

Mr. SHIPLEY.—In regard to this same clause waiving—read the clause on the other requisition 438.

Mr. ALLEN.—I submit the requisition speaks for itself.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—I asked him to read the comparative clause on [958—906] requisition 438.

A. “Required to fill requisitions from Atlantic Battleship Squadron; request waiving of advertisement and purchase through Purchasing Pay Office, Seattle, Washington.”

Q. That is requisition 490, is it not?

A. Yes, sir.

Q. In the case of requisition 490, state whether or not the same purposes actuated you that did in the preparation of requisition 438?

A. Identically the same, sir; the result was the same.

Q. Was this requisition 490 passed up to Paymaster Spear for his signature? A. Yes, sir.

Q. Containing the clause which you just read, “Waiving advertisement”? A. Yes, sir.

Q. What was done in the case of 490 after that requisition was signed by the Paymaster?

A. It was sent to the Bureau of Supplies and Accounts and by the Paymaster General approved for purchase through the Navy Pay Office, Seattle.

Q. Was advertising in fact dispensed with, if you know? A. It was, yes, sir.

Q. How was the article requisitioned for actually purchased? A. After competition.

Q. In the usual form, by calling for proposals in the Navy Pay Office? A. Yes, sir.

Q. The same as was done in requisition 438?

A. Identically the same.

Q. Has there ever at any time been any charge

(Testimony of Edwin F. Meyer.)

made against you of [959—907] any fraudulent dealing or conduct in reference to requisition 490?

A. No, sir.

Q. And you say they were prepared for identically the same purposes and identically the same manner?

A. Identically the same in both instances.

Q. In the endorsement of the request that advertising be waived, does that carry with it the waiving of competitive bidding? A. Indeed not, sir.

Q. Does it have any bearing upon that question?

A. No, sir, merely waives the advertising of this by the Bureau, by the printing of proposals and the sending it broadcast over the country.

Q. Now, why was that done?

A. Because it took too much time. It requires from four to six months to get material after the requisition is prepared if the procedure of advertising is resorted to.

Q. I will call your attention to a folder, open purchase requisition 179, series 1910—no, that is 1911, I thought that was a cipher, I guess that is 1911, marked Defendants' Exhibit "O" in the former trial—no, it is Defendants' Exhibit "O" in this trial for identification, and ask you to examine the contents of that folder and state whether or not there is in that folder a letter from Paymaster Spear—

Mr. ALLEN.—Just a moment. That hasn't been admitted in evidence, I think.

Mr. SHIPLEY.—The offer, Mr. Allen, is renewed with reference to Defendants' Exhibit "U," con-

(Testimony of Edwin F. Meyer.)

tract number 08188, date, January 11, 1910.

Mr. ALLEN.—Renew the objection, unless your Honor thinks the witness is prepared to state he wrote the letter. It has been [960—908] admitted, I understand, Mr. Shipley; go ahead.

Mr. SHIPLEY.—Calling your attention to that folder and its contents which you now hold in your hand, which is marked Defendants' Exhibit "U," state what the subject matter of that transaction was?

The COURT.—This is already in evidence before the Court and jury. If there is anything to which you desire to call their attention, all right.

Mr. SHIPLEY.—That is the purpose, just preliminary.

A. This is requisition, a contract, rather issued or made with Roger B. German, New York, for bolts and nuts.

Q. Now, calling your attention to a particular portion of that folder, do you find a letter written by the General Storekeeper of the Navy Yard at Puget Sound?

A. Yes, sir, to the Bureau of Supplies and Accounts, Washington, D. C.

Q. Read that letter?

A. It is dated February 7th, 1910. "Sir: In connection with the Bureau's letter 106982 of November 20th, 1909, relative to the apparently excessive stock carried at this yard, it is desired to bring the following transactions to the Bureau's attention as indicating a certain length of time required to re-

(Testimony of Edwin F. Meyer.)

plenish a certain stock of materials that could not be obtained in large quantities from the warehouses of local dealers.

Naval Supply Fund requisition number 52 for bolts and nuts was submitted to the Bureau under date of September 30th, 1909. The material was found on Schedule 1921, dated December 7th, 1909. Purchase was made under contract 12,529, dated January 7th, 1909, for delivery within 120 days, or more than six months after the date of the request for stock. [961—909]

Naval Supply Fund requisition number 62 for bolts and nuts was submitted to the Bureau under date of October 22d, 1909, for delivery within 60 days after date of contract. The material was called for in schedule 1958, December 14, 1909, and purchase was made under Bureau Order 8188, dated January 7th, 1910, for delivery within ninety days from January 8th, 1910, or five and a half months after the request was made.

There is no doubt an urgent demand on the part of these bolts for work on the 'Tennessee' and 'Washington,' and, judging from the allowances for delivery in the above cases, it would be very difficult to obtain any considerable quantity in the local market or for immediate shipment from the east.

These things are not considered exceptional, as many kinds of material used by the navy that are not carried in stock by dealers to the same extent that bolts and nuts are carried by them, and cannot be manufactured in a less time. While this depart-

(Testimony of Edwin F. Meyer.)

ment will continue its endeavors to reduce stock in accordance with the Bureau's instructions, any system which limits requests for purchase to only actual known demands will necessarily result oftentimes in the liability of the General Storekeeper to meet the demands of the Manufacturing Department for material required for urgent work that has not been foreseen and which requires material ordinarily obtained from stock, and in quantities in excess of the ordinary issues.

Of course, it is aimed to maintain a minimum of one of three months supply of stock for which there is a demand at all times, but when the issues of articles are excessive and unforeseen and the stock cannot be replenished in less than four to seven months, often the ordinary demands cannot be met, which naturally brings forth sharp criticism from the Manufacturing Department. [962—910]

The Puget Sound Navy Yard is somewhat unfortunate in being located some 3,000 miles from its market, but even at that it is believed that it should not take six months to secure a stock of articles; although, if such is the case, the Bureau will find a strong tendency on the part of this yard to call for a considerable more stock than would be demanded could it be assured of delivery in sixty to ninety days, very respectfully, Paymaster, U. S. Navy, Storekeeper, Bureau of Supplies and Accounts, Navy Department, Washington, D. C."

Mr. ALLEN.—February 7th, 1910?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Isn't there a more recent one than that? That is February 7th.

Mr. SHIPLEY.—Mr. Meyer, state to the jury whether or not the same conditions recited in this communication addressed by Paymaster Spear to the Bureau of Supplies and Accounts at Washington, D. C. as obtaining in the period covered by this letter, obtaining during the period from December 1st, 1907, to June 1st, 1908?

A. Yes, sir, to the best of my knowledge, the same condition obtained.

Q. Now, Mr. Meyer, at the time you prepared this requisition 490 and the requisition 438, which is involved in the indictment under which you are now on trial, how long after that time, to the best of your present recollection, was it that the battleship fleet in fact arrived, or portions of it?

A. They began to arrive about the middle of May, and continued to arrive, I think, in squads until the first of June sometime.

Mr. SHIPLEY.—Do you remember at this time what period of time was allowed for the outfitting of the fleet here at this navy yard? [963—911]

A. No, I do not. They were to sail the first of July, sometime around there.

Q. Mr. Kettlewell testified in this case that you had a conversation with him in January to the effect that you were going to prepare large requisitions for large amounts, and that you were going to hold them for as long a time as possible. State whether that is true or false. A. That is absolutely false, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, after you received your instructions from Paymaster Spear, in the latter part of March, to assemble a stock of supplies sufficient to answer the needs of this battleship fleet, state when you commenced or entered upon the work of the preparation of the requisitions.

A. Immediately thereafter.

Q. And continued that during what length of time? A. During the time the ships were here.

Q. During what period would that be?

A. Well, up—during April, May, June.

Q. And one of the first steps of supplies that you acted upon was the zinc supply?

A. That was one of the first, yes, sir.

Q. Being the 50,000 pounds counted upon in the indictment in this case? A. Yes, sir.

Q. Were you influenced by any fraudulent purpose or design in that connection?

A. No, sir, it was for the sole purpose of having on hand an article which I knew the ships would require.

Q. Mr. Meyer, you have there, I believe, at hand requisition 438, have you not? [964—912]

A. Yes, sir, have the photographed copy of it.

Q. What is the amount called for in that requisition? A. 50,000 pounds.

Q. What estimate was placed on that requisition?

A. I haven't the copy of the requisition here showing the estimate.

Q. That doesn't show the estimate?

A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. Do you know from your own knowledge?

A. 12½ cents.

Q. What was the prevailing price of zinc in the local market at that time, if you know?

A. 12 cents, as far as naval purchases were concerned, sir.

Mr. SHIPLEY.—Was the Paymaster General of the United States Navy and the Secretary of the United States Navy informed as to the local prices of zinc for the needs of this navy yard at that time?

Mr. SHIPLEY.—Mr. Meyer, you have just been examined with reference to requisition 490. That is exhibit—one of those you have there?

A. No, sir, I haven't it here.

Q. What is that exhibit, "72" or "79"?

A. This is exhibit "U" I have here. 490 is exhibit "79," I think.

Q. Examine this folder and state whether the contents of that folder shows that the Secretary of the Navy of the United States and the Bureau of Supplies and Accounts had knowledge of the prices of zinc in this locality accessible to the use of this navy yard?

The COURT.—Is that exhibit "A-79"?

A. No, sir, Plaintiff's Exhibit "79." [965—913]

Mr. SHIPLEY.—Plaintiff's Exhibit "79" offered by the gentleman himself.

Mr. ALLEN.—I now object, your Honor, to the question and answer from this witness for the reason that there isn't any evidence here which will disclose that this witness is any more qualified to state

(Testimony of Edwin F. Meyer.)

what knowledge may or may not have been in his mind—

The COURT.—Let me make this observation: Read that exhibit, if there is anything in there you want, and let the jury determine.

Mr. SHIPLEY.—I am asking him if those papers bear any record of anything of that kind. He is an expert in this office.

The COURT.—The objection to the form of the question is sustained, as to what it shows. The record is in evidence, and he can read any part of it, or all of it, to the jury.

Mr. SHIPLEY.—Exception.

Q. Mr. Meyer, if there is anything in that folder and those records which indicate or bear evidence of the action of the Secretary of the Navy, or of the Bureau of Supplies and Accounts, with reference to the price for zinc in this locality accessible to this navy yard, kindly read to the jury.

A. Under date of May 11th—this is the endorsement of Bureau of Supplies and Accounts.

Q. What year? A. 1908.

Mr. ALLEN.—What is the date? A. 1911, sir.

Q. 1908.

A. 1908. "Purchasing Pay Officer, Purchasing Pay Office, Seattle, Washington, submits bids received under Naval Supply Fund requisition 444 for rolled sheet zinc. Respectfully submitted to the Secretary of the Navy. It is recommended that the Bureau be [966—914] authorized to wire award of this zinc to the lowest bidder, the W. A. Corder

(Testimony of Edwin F. Meyer.)

Company. E. B. Rogers, Paymaster General, U. S. Navy.

May 12th, 1908, Bureau of Supplies and Accounts, submits bids received under Naval Supply Fund requisition number 444, Navy Yard, Puget Sound, Washington,—”

Q. Does or does not that record show the price of zinc in this market which was authorized to be purchased by the Secretary of the Navy and the Bureau of Supplies and Accounts, as shows in that folder?

A. Yes, sir, the price is given here.

Q. What is the price? A. \$12.45 per hundred.

Q. And that was at the same period that the 12½ cents was inserted in the requisition 438, practically? A. Practically the same time, yes, sir.

Mr. SHIPLEY.—Mr. Meyer, calling your attention to requisition 438, which is involved in this case, I will ask you whether the Paymaster General of the United States Navy authorized that particular purchase for 50,000 pounds at 12½ cents?

A. Yes, sir.

Q. Did or did not the Secretary of the United States Navy authorize the particular purchase, 50,000 pounds, in this same requisition at 12½ cents?

A. He did, sir.

Q. In the preparation of this exhibit 438, state to the jury how that was prepared and by whom?

A. It was prepared, as all requisitions in the Storekeeper's Office, that is, in the requisition office, by either myself or one of the clerks in the office. This particular requisition, [967—915] I think, was

(Testimony of Edwin F. Meyer.)

prepared by one of the clerks in the office.

Q. Why do you think so, Mr. Meyer?

A. Well, it bears the initial of W. K. S., who was then a clerk, Mr. Spaulding. It says "None of the articles called for on the requisition is in store."

Q. What were the duties of Mr. Spaulding at the time that requisition was prepared?

A. He was assistant requisition clerk.

Q. Acting under whom? A. Acting under me.

Q. And how was the work, the requisition work, done by him initiated; what started him in motion?

A. Well, either a requisition that came through me to him.

Q. In what form would it be submitted?

A. Memorandums or telephonic communications.

Q. What form would you submit to him, the memorandum?

A. Well, I would either tell him by word of mouth or by memorandum, pencil memorandum.

Q. And in your work of your office was it customary for you to do the actual physical work of the drawing up of this requisition?

A. No, sir, I couldn't do that.

Q. Why not? Explain to the jury the facts.

A. There was entirely too much detail about them. There were assistants in the office, and I had so many other things to do that the actual performance was by another clerk.

Q. Who were some of these other clerks who prepared this actual physical work under your direction?

(Testimony of Edwin F. Meyer.)

A. Well, we had a clerk, A. C. Reed, at one time, Mr. Spaulding at another. I think Mr. Spaulding relieved Mr. Reed. [968—916]

Q. Who was doing that work at the particular time of the preparation of requisition 438?

A. Mr. Spaulding.

Q. And when Mr. Spaulding did this work what was the custom in regard to his initialing his work?

A. Well, he would place a stamp on the requisition and turn it over to me, and under that stamp he placed his initials, initialed the requisitions that he prepared, but on the requisitions that came in from the other yard departments—

Q. Does that stamp appear, or initial appear, on this requisition? A. Yes, sir.

Q. And what does that indicate?

A. It says, "None of the articles called for on this requisition are in store."

Q. I mean, what does it indicate with reference to the preparation of the requisition? A. W. K. S.

Q. What does it indicate with reference to who prepared the requisition, the physical work of it?

A. Well, it indicates he might have done it, or some other department may have prepared it.

Q. Either that it was prepared from some other department or that he had done it? A. Yes, sir.

Q. Now calling your attention to the contents of that requisition, specifying the quantity, the price and the extended total, what does that requisition show?

(Testimony of Edwin F. Meyer.)

A. I would have to have the folder here. It shows—

Q. Well, you are familiar with the records. Are any of those things shown on this copy? [968½—917]

A. No, the extension isn't shown on the original.

Q. Well, what portions of the things I have mentioned do appear? A. On this copy?

Q. Yes.

A. The quantity and the material, the specifications, the time of delivery.

Q. And the unit price?

A. No, sir, the unit price isn't shown on it.

Q. Isn't shown on this copy. What is this, a copy of the original? A. Yes, sir.

Q. And that goes to what department?

A. It lodges finally with the Treasury Department.

Q. Now, the other copies, besides this original, where do they go?

A. One copy will remain in the office, the office file; another copy, an advance copy, is sent to the Purchasing Pay Office here and to the Bureau of Supplies and Accounts.

Q. And before any of these copies were sent out, either the original or any of the copies, where did they go from your desk?

A. To the Storekeeper's desk.

Q. Who was the Paymaster at that time?

A. Paymaster Spear.

Q. Mr. Meyer, have you made an examination of

(Testimony of Edwin F. Meyer.)

the different copies of this requisition which have been introduced in evidence in this case?

A. I have.

Q. Calling your attention to the matter of putting the quantity of stock purchased, the unit price and the extensions of the total sum, on all the copies, is it customary to have those three matters [969—918] shown?

A. Well, they are shown on all copies with the exception of the price. That is shown only on the—that is shown—that is not shown on the original, but shown on all the other three copies.

Q. Shown on all but the original?

A. Not the three things. The price is the only thing not shown on the original.

Q. I say, all the copies do bear it? A. Yes, sir.

Q. On which copies that have been introduced in evidence is it that the discrepancy exists that has been referred to by the witnesses in this case?

A. All copies, apparently.

Q. All of the copies. Was your attention ever called to that fact prior to this trial?

A. No, sir; I don't recall it.

Q. What, if anything, do you know about that?

A. Only the matters brought out here, that the extension was made on the requisition \$625.

Q. During the entire period of your connection with the Puget Sound Navy Yard, subsequent to the first day of March, was your attention ever called by the Bureau of Supplies and Accounts, the General Storekeeper or any other superior in the Navy Yard

(Testimony of Edwin F. Meyer.)

Department, to the fact of the discrepancy between the amount six hundred and twenty-five appearing on some of these copies, and \$6,250, for the 50,000 at 12½ cents would total?

A. No, sir; I don't recall anything said about it.

Q. Were you ever called upon by anybody to explain why such a discrepancy, if any, did exist?

A. Not that I am aware of, sir. [970—919]

Mr. ALLEN.—Not that you are aware of?

A. Not that I am aware of.

Mr. SHIPLEY.—You would know if that had been made?

A. I would remember it, I think.

Q. Mr. Meyer, about how long have you been familiar with the procedure in the Navy Department of the United States?

A. Since 1896. I entered the service—I wasn't familiar at that time, but I grew familiar from time to time.

Q. During that period of sixteen years, did you become familiar with the system of accounting that prevailed so far as the Storekeeper's Office was concerned, and its connection with the departments at Washington? A. Yes, sir.

Q. Do you know whether or not it would have been possible to have taken through the departments at Washington, and the Bureau of Supplies and Accounts, a purchase of 50,000 pounds of zinc at 12½ cents per pound, at a total of \$625, a balance against that, a disbursement of \$7,400.

A. Why, no, sir; hardly.

(Testimony of Edwin F. Meyer.)

Q. What would have been the result, so far as the General Storekeeper's office, and you in particular, being called to account if that had been done?

A. There would have been no disbursement.

Q. Would or would not you have been called upon to account if that condition had existed?

A. No, sir; there would never have been a disbursement of that article on any approval of only \$625.

Q. Mr. Meyer, have you ever received any complaint from Paymaster Spear as to his having been called to account for any irregularity in connection with any discrepancy in the amount as appearing upon [971—920] this exhibit? A. No, sir.

Q. Has there been any of the officers of the Accounting Department of the United States Navy brought out here as witnesses to testify in this case as to any discrepancy, or any irregularity, occasioned by reason of a voucher being put through for \$7,400 against an authorized expenditure of \$625?

A. No, sir; I am not aware of any.

Mr. SHIPLEY.—Mr. Meyer, did you have anything to do with the purchase of this particular zinc?

A. I did not, sir.

Q. Did you or did you not have any knowledge—or when did you obtain the first knowledge as to who had received the contract?

A. When the award was made we received a copy of it from the Pay Office. The folder will show the date of receipt of that in the Storekeeper's Office.

Q. Now, prior to the reception of the award, or the copy which was filed in your office, did you have any

(Testimony of Edwin F. Meyer.)

knowledge or any information from any living soul as to who was to receive that contract, or did receive it? A. Had no information whatever, sir.

Q. Had you ever, prior to that time, had any conversation with Mr. Kettlewell, Mr. Corder, Mr. Goldberg, or any other person, in regard to the letting of that contract, or who was to receive the contract?

A. No, sir.

Q. What connection, if any, did you have with the fixing of the time of delivery on requisition 438?

A. It was fixed by me.

Q. You mean by that on the requisition? [972—921] A. That is, the time was fixed, yes.

Q. I say, on the requisition? A. Yes, sir.

Q. Did you have anything to do with fixing or determining the time of actual delivery under the contract? A. No, sir.

Q. When was your first knowledge that the time to which the contractor was limited had been changed from the time as specified by you in the requisition itself?

A. The first knowledge I had is when I was looking over those papers in connection with these indictments.

Q. When?

A. Sometime here about a week or two before this trial started.

Q. Did you know at any time prior to the commencement of this trial that that contract had been let for the 50,000 pounds of zinc requiring a delivery in five days? A. No, sir, I did not.

(Testimony of Edwin F. Meyer.)

Q. Was that subject matter ever discussed between yourself, Kettlewell, Goldberg, Corder or anyone else?

A. Never discussed by me, sir, with any one.

Q. Why did you fix the time of delivery under this particular requisition at fifteen days?

A. Well, we were expecting—

Q. I mean fifteen days after the award?

A. Well, we were expecting the ships to arrive here sometime in May. We wanted to have a stock of material on hand before their arrival, as it would be a physical impossibility for us to handle all of this material that we were going to call for at one time. We were asking 400 tons of supplies, and the facilities of the yard [973—922] would not take care of such a large quantity. We had the deliveries covering quite a period. And in this particular instance the requisition was dated on or about—on April 1st. I stated in the requisition it was to be delivered within fifteen days after date of award, that is, fifteen days after the contractor had received the order, allowing time for shipment from Portland, or San Francisco, or mayhap, from the east, if it was necessary. That would—allowing five days, or six days, for the requisition to get to Washington, and about six days to be returned, would be about twelve days, and the number of days for proposals to be given out and distributed, and bids to be received would probably take twenty or thirty days I figured. Well, there would be about fifteen days after that, would put the delivery of the material

(Testimony of Edwin F. Meyer.)

on the navy yard sometime during May, maybe about the middle of May, permitting it to be inspected, and so forth, prior to the probable call of these ships.

Q. Prior to the time of your preparation of this requisition of 50,000 pounds, did you have, either during the month of January, as testified to by Kettlewell, or any other time, have any conversation with Mr. Kettlewell about your intention to issue a requisition for 50,000 pounds of zinc, or any large quantity.

A. No, sir. As I stated, I did not know until the latter part of March the requisition would issue.

Q. I say, any time prior to April 1st?

A. No, sir.

Q. At any time prior to your preparation of this requisition for 50,000 pounds, did you ever have any conversation with Mr. Goldberg with reference to your intended issuance of a requisition for that amount, or any other large amount? A. No, sir.

[974—923]

Q. Did you ever at any time have any conversation with Mr. Goldberg in which you gave him any information as to your intention to issue requisitions in the future? A. No, sir.

Q. Mr. Meyer, you heard the testimony of Mr. Kettlewell in this case relative to his turning down a certain voucher under requisition number 193, Plaintiff's Exhibit "17," by returning the voucher to the Commandant and calling attention to excess delivery. State to the jury what you know about that transaction.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—That was in the early part of January, 1908?

Mr. SHIPLEY.—Yes.

A. Why, I only recall that which is shown in the exhibit here, Mr. Shipley. Requisition 193 calls for 4,000 pounds of zinc plates for boilers. The estimate is 12 cents. It was purchased from the Great Western Smelting & Refining Company at 16 cents.

Q. Who prepared that requisition, Mr. Meyer?

A. The Storekeeper's Office, sir.

Q. Is there anything in there bearing upon the question of who determined or suggested the estimated price?

A. No, sir, there is nothing there showing that directly. It was done in the Storekeeper's office under my direction.

Mr. ALLEN.—Under your direction, you say?

A. Yes, sir.

Mr. SHIPLEY.—What was the date of that requisition? A. December 4, 1907.

Q. You state that the estimate on that was what? A. 12 cents.

Q. And the award was made at what price?

A. 16 cents.

Q. Is there anything there showing how that discrepancy, or why [975—924] it was brought about, that variation?

A. I saw in one of the folders, the Pay Office folder—

Mr. MORRIS.—19 or 20? A. It must be 18.

Mr. SHIPLEY.—He says it must be 18.

(Testimony of Edwin F. Meyer.)

A. "18" is the exhibit number, I think, covering that.

Q. The voucher under that requisition would appear in which folder?

A. Well, it would appear in either folder, in both folders.

Q. It it in that one?

A. The record of the voucher?

Q. What is that?

A. The record of the voucher?

Q. Well, there is a reference here to an endorsement, or something, in regard to excess delivery.

A. Well, that would show in both folders. The note I said was in this folder is in Mr. Kettlewell's handwriting.

Q. How is that?

A. The note is here in Mr. Kettlewell's handwriting. You asked why it was made at 16 cents?

Q. Yes.

A. I said there was a note in one of these folders here in Mr. Kettlewell's handwriting.

Q. You find it? A. Yes, sir.

Q. Will you read it? A. Yes, sir.

Mr. ALLEN.—What are you reading from?

Mr. MORRIS.—Plaintiff's Exhibit "18."

Mr. ALLEN.—What is that, zinc? [976—925]

A. Yes, sir.

Mr. ALLEN.—That is one of December 5th?

A. Yes, sir, proposal of December 5th, 1207, Mr. Forbes states by phone that one lot of 4,000 pounds must be delivered at once and adv. price will

(Testimony of Edwin F. Meyer.)

be approved. Initial "K," and note, "C-192-N. S. F."

Mr. ALLEN.—You recognize that writing, do you, as Kettlewell's? A. Yes, sir.

Mr. SHIPLEY.—The percentage of increase above the estimated cost in that case was what?

A. Well, as 12 is to 16, over 25 per cent.

Q. By what authority in that case is the estimated cost of 12 cents exceeded?

A. The authority of that memo there is the only authority I find here, that memo I just read, that the Commandant would approve it.

Mr. VANDERVEER.—What was the lowest bid there?

Mr. SHIPLEY.—Just read the proposal and what was done in regard to it.

A. (Reading:) W. A. Corder Company bid 10 $\frac{1}{4}$ cents on that for five-day delivery; the Great Western Smelting & Refining Company bid 16 cents for immediate delivery; the Seattle Hardware Company bid 8 $\frac{1}{2}$ cents for eight days delivery; the Pacific Engineering Company bid 12 $\frac{1}{2}$ cents for five days delivery; the Pacific Metal Works, "Not prepared to bid."

Q. Did the Commandant of the navy yard authorize the purchase of that zinc at 16 cents per pound after you had estimated the price of 12 cents?

A. If this authority here might be taken as the Commandant's authority I am not at liberty to say, sir. [977—926]

Q. How much zinc did the contractor deliver to

(Testimony of Edwin F. Meyer.)

the navy yard, as shown by the Inspection Call there?

A. The contractor billed, or invoiced, 5,933 pounds.

Q. What was done by the Board of Inspection, as shown by that folder?

A. The Board of Inspection accepted the entire quantity.

Q. Who composed that Board of Inspection, as disclosed by the folder?

A. Z. E. Briggs, Lieutenant, U. S. Navy, Jonathan Brooks, Paymaster, U. S. Navy.

Q. Did you have anything to do with that inspection? A. No, sir.

Q. What does that show in regard to the acceptance of the zinc following that inspection by the Board of Inspection ?

A. The entire quantity delivered was accepted.

Q. By whom? A. The Board of Inspection.

Q. Then what was done?

A. The Inspection Call was returned to the Storekeeper's office, and finally in the hands of the public Bill Clerk, who prepared a voucher for the quantity passed by the Board.

Q. Was the voucher paid for the full amount? If not, why?

A. The voucher was prepared and sent over to the Purchasing Pay Officer, who returned it with the communication here.

Q. Well, what was that communication?

A. (Reading:) January 11th, 1908. U. S. Navy Pay Office, Seattle, Washington. No. 5408. Sir:

(Testimony of Edwin F. Meyer.)

I have the honor to return herewith General Storekeeper's voucher number 506, dated January 7th, 1908, for \$949.28 in favor of the Great Western Smelting & Refining Company, in payment for 5,933 pounds zinc plates delivered [978—927] under Naval Supply Fund requisition Number 193, inviting attention to the fact this office placed an order for but 4,000 pounds of zinc plates under this requisition.

This was an emergency purchase for immediate delivery, a part of the material being shipped by express, the contractor informed me at the time, and consequently the price was abnormally high. Third, it would therefore appear that in accepting more than 4,000 pounds the Government will pay an excessive price for the overdelivery. Very respectfully, Robert H. Orr, Paymaster, U. S. Navy, Purchasing Pay Office. To the Commandant, Puget Sound Navy Yard, Bremerton, Washington.

Q. Then what was done?

A. It shows a stamp here, "Received Commandant's Office January 13, 1908, and by him keyed to the General Storekeeper."

Mr. ALLEN.—You mean sent to the General Storekeeper?

A. Sent to the General Storekeeper, yes.

Mr. ALLEN.—It came to you, then.

Mr. SHIPLEY.—What became of the 1,933 pounds, if you know?

A. Well, the Storekeeper's office forwarded all communications or correspondence in this particu-

(Testimony of Edwin F. Meyer.)

lar instance to the Board of Inspection.

Q. Where?

A. At the navy yard, the Board that accepted the material.

Q. Why was that done?

Mr. ALLEN.—I object, unless he was reading from the record.

A. I am reading from the record.

Q. Why was it sent by the Board of Inspection to the General Storekeeper's Office?

A. Why was it sent?

Q. Yes. [979—928]

Mr. ALLEN.—Read from the record.

A. The record won't show why it was sent.

Mr. ALLEN.—Have you any personal knowledge of why it was done? A. Yes, sir, I have.

Mr. ALLEN.—State.

A. It was sent to the Board of Inspection because the Board of Inspection originally passed all of the material, and no action could be taken in connection with it unless the Board of Inspection had acted; that is, we couldn't take—we couldn't say this material should be rejected without calling the Board of Inspection's attention to it.

Mr. SHIPLEY.—And then what was done in that connection?

A. Well, we have an endorsement here forwarding this correspondence to the Board of Inspection. (Reading:) 193, requisition 193, N. S. F., 1908. Navy Yard, Puget Sound, Washington. Sir: Subject: Purchasing Pay Officer, Seattle, Washington,

(Testimony of Edwin F. Meyer.)

relative to excess delivery of zinc plate under Naval Supply requisition 195. Respectfully referred to the Board of Inspection, inviting attention to attached letter. Second, in view of the conditions herein mentioned this officer suggests that the material referred to be re-inspected in order that the excess delivery be rejected and returned to the contractor. Ray Spear, Paymaster, U. S. Navy, General Storekeeper.

Q. Now, Mr. Meyer, who wrote that?

A. Well, it was done under my direction. Who did the physical work, I can't say.

Q. At the time you wrote that recommendation to the Board of Inspection that they re-inspect and reject the surplus of this delivery, were you in any conspiracy with Mr. Goldberg of the [980—929] Great Western Smelting & Refining Company?

A. No, sir.

Q. Or any of these other parties, to defraud the Government by that transaction? A. No, sir.

Mr. ALLEN.—That is January 13th, is it?

A. January 13th was the date of the endorsement.

Mr. SHIPLEY.—Was the excess delivery in fact rejected?

A. It was rejected, yes, sir. The Board of Inspection returned the correspondence with their second endorsement number 411, enclosure 6, dated January 14th, 1908. (Reading:) Purchasing Pay Officer, Seattle, Washington. Relative to excess delivery of zinc plates under Naval Supply Fund requisition number 195. Respectfully returned to the

(Testimony of Edwin F. Meyer.)

Commandant through the General Storekeeper. It is recommended that a Call be issued for re-inspection of the material passed on Call No. 1124, with a view of the rejection and return to contractor of the amount in excess of 4,000 pounds. C. H. Hayes, Lieutenant Commander, U. S. Navy, Senior Member Board of Inspection.

Q. Then what was done?

A. The Storekeeper's office then issued a new Inspection Call in which the excess delivery was rejected.

Q. Mr. Meyer, calling your attention to Plaintiff's Exhibit "19" and "20," introduced by the Government in this case, I will ask you to examine those exhibits and state to what they relate.

A. They relate to Naval Supply Fund requisition number 359, dated March 6th, 1908, for 1,933 pounds of boiler zinc at an estimated price of 12 cents, to be practically pure, soft zinc, same specifications as before.

Q. Who placed that estimate in there of 12 cents?
[981—930]

A. It was done under my direction, sir.

Q. When was that done with reference to the previous authorized purchase at 16 cents?

A. Subsequent thereto, about two months or so.

Q. Why did you not place the estimate on the previous purchase of 16 cents in making the estimate on this particular requisition?

A. Well, the correspondence in the other folder shows that it was due to the fact that some of it came

(Testimony of Edwin F. Meyer.)

by express and was abnormally high, as stated by the Purchasing Pay Officer.

Mr. MORRIS.—What folder is that, Mr. Meyer?

A. The folder I just read from.

Mr. SHIPLEY.—Which is exhibit “18”?

A. “18.” The records here show that this was an emergency purchase for immediate delivery, therefore the price was 16 cents and was abnormally high.

Q. Now, the 1,933 pounds was a portion of the zinc which had been delivered by the contractor on the same shipment on which the 4,000 pounds was authorized to be purchased?

A. Yes, sir. This is a surplus, or an excess delivery, that was over at the navy yard that had been rejected because it was purchased at an abnormally high price.

Q. And in fixing the estimate in the subsequent requisition authorizing purchase of the surplus of 1,933 pounds, you reduced the estimate¹ from 16 cents, the contract price, to how much?

A. Twelve cents, that being the prevailing price locally.

Q. And in what form was that requisition then submitted to the Bureau at Washington?

A. Well, it was submitted to the Storekeeper for signature—I read from the requisition this notation: “To cover material rejected under former requisitions on account of excess delivery. [982—931] It is requested that the Great Western Smelting & Refining Company be given an opportunity to bid, to

(Testimony of Edwin F. Meyer.)

be delivered on the wharf at navy yard within fifteen days after date of award.”

Q. Now, Mr. Meyer, was this requisition limited in its scope to a purchase of zinc from the Western Smelting & Refining Company as it left your office?

A. No, sir, the statement on the face of the requisition was placed on there by me for the purpose of calling attention to the fact that Great Western Smelting & Refining Company had delivered this material, and it was over there in excess, and that they be given an opportunity, along with other dealers, to bid on that material.

Q. In competition?

A. In competition, yes, sir.

Q. This was an open purchase requisition?

A. Open purchase requisition.

Q. And what was done subsequently?

A. It was purchased from the Great Western Smelting & Refining Company at 12½ per pound, or a half cent in excess of the estimate.

Q. Well, what was done with that requisition after you issued it with the provision that it be purchased in the open market and that the smelter company be permitted to bid, what was done subsequent to that?

A. Requisition was sent—after the signature of the Storekeeper, was sent to the Paymaster General of the Navy at Washington, D. C.

Q. And what did he do with it?

A. Well, he returned it to the Navy Pay Office with the endorsement—

(Testimony of Edwin F. Meyer.)

Q. Read that endorsement to the jury. [983—932]

A. (Reading:) Navy Department, Bureau of Supplies and Accounts, Washington, D. C. March 14, 1908. Memorandum to accompany Naval Supply Fund, Puget Sound, requisition number 359, for 1,933 pounds boiler zines. In view of the statements on the face of this requisition that it is made to cover material rejected under former requisitions on account of excess delivery, the Bureau has approved this requisition, competition waived. The Bureau presumes that this material is now in the navy yard, and does not understand the paragraph which requires delivery within fifteen days after date of award. It is desired that more definite information be placed on similar requisitions in the future so that the Bureau will be able to intelligently decide as to the exact status of the same.

Q. What was the effect of that endorsement upon the subsequent proceedings, what was done following that?

A. Well, that had the effect of waiving competition, but competition was not actually waived.

Q. Had you, in your preparation of that requisition, asked for the waiving of competition and that the purchase be made exclusively from the Great Western Smelting & Refining Company?

A. No, sir, it was my purpose in placing that on there merely to give them an opportunity to bid with other dealers.

Q. Compete with the world?

(Testimony of Edwin F. Meyer.)

A. And if they were the low bidders for the material that was on the yard it would be accepted, and if not, it would be returned to them.

Q. And the Bureau at Washington, what did they do in regard to overruling your action and permitting the contract to go to the Great Western Smelting & Refining Company without competition?

A. Well, their endorsement here had the effect of— [984—933]

Mr. SHIPLEY.—Did you have anything to do with the action of the Bureau at Washington in making that change in the requisition as it emanated from your office? A. No, sir, I hadn't.

Q. Did you have any power or influence which would render it possible for you to bring about that change? A. No, sir.

Q. Was the waiving of competitive bidding and the purchasing of that amount of excess delivery from the Great Western Smelting & Refining Company brought about as the result of any conspiracy, scheme or combination between yourself, Mr. Goldberg, or any officers or agents of the Great Western Smelting & Refining Company? A. No, sir.

Q. You never have known of the action of the Bureau at Washington being criticised for its act in directing this purchase to be made from the Great Western Smelting & Refining Company exclusively at 12½ cents, have you? A. No, sir.

Q. Mr. Meyer, kindly state the date of that endorsement. I think it is an endorsement in that file by the Bureau of Supplies and Accounts at Wash-

(Testimony of Edwin F. Meyer.)

ington, or the Paymaster General.

A. I don't recall the date, sir. He has taken the folders.

Q. (Handing papers to witness.)

A. March 14th.

Mr. ALLEN.—What is the number, Mr. Meyer?

Mr. SHIPLEY.—What exhibit number?

A. 359, Exhibit Number "19."

Q. And it is March 14th of what year?

A. 1908, sir. [985.—934]

Q. Did you have that matter, that action of the authorities at Washington, before you or in your knowledge at the time you prepared requisitions 438 and fixed the estimated price at 12½ cents?

A. Yes, sir, it was in the office; I had access to it.

Q. There was only about two weeks, then, in time, wasn't there, between the two, wasn't there, Mr. Meyer?

A. Yes, sir.

Q. Mr. Meyer, did you ever at any time discuss with either Kettlewell, Goldberg or Corder any of the matters or proceedings covered by Plaintiff's Exhibit, or Government's Exhibits "4," "5," "6" and "7," relating to requisition 438, which is covered by the indictment now being investigated?

A. No, sir, I never discussed any phase of it with any one of them.

Q. Mr. Meyer, I hand you for examination Government's Exhibits "65," "66," "67" and "68." Kindly examine those folders. To what subject matter do those relate?

A. Zinc, rolled sheet.

Mr. ALLEN.—What is the date, Mr. Shipley?

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—State the number of the exhibits and the date.

A. “65” and “66” are Pay Office and yard folders, requisition 79.

Q. Requisition what? A. 79.

Q. And those are which two folders?

A. “65” and “66,” Pay Office and yard respectively.

Mr. ALLEN.—For zinc, you say?

A. For zinc, yes, sir.

Mr. ALLEN.—What is the date of it?

A. October 7th, 1907.

Mr. SHIPLEY.—And what are the others, “67” and “68”? [986—935]

A. “67,” Pay Office, and yard “81,” requisition 81, dated October 7th.

Q. What date? A. October 7th, 1907.

Q. By whom were those requisitions prepared?

A. Engineer Office, navy yard.

Q. And they, you say, are for what?

A. Zinc, rolled sheet zinc.

Q. Of what character, for what use?

A. Well, they are not boiler zincs, they are zincs of same specifications, but different size. Boiler zincs are a special size; these are larger plates used for manufacturing articles for the ships, repairs to the ships.

Q. Did you have anything to do with the preparations of those requisitions?

A. Absolutely nothing, sir.

(Testimony of Edwin F. Meyer.)

Q. Who fixed the estimate upon those requisitions?

A. They are under the direction of the engineer.

Mr. ALLEN.—I respectfully suggest these were covered this morning.

Mr. SHIPLEY.—They were not, your Honor. These are exhibits introduced by the Government as circumstances against this defendant.

The COURT.—Let me say this: This witness was handed these exhibits this afternoon, and “79” refers to the steamship “Wisconsin,” and “81” to steamship “Oregon,” went over it this afternoon and I marked it down there.

Mr. MORRIS.—Your Honor is right.

The COURT.—Yes, I know it.

Q. Who fixed the estimates upon the requisition?
[987—936]

A. The Engineer’s Office, it was done in his office.

Q. What is the estimated cost in those two requisitions? A. Fifteen cents a pound.

Q. Those were prepared in what month?

A. October, 1907.

Q. And those two requisitions’ numbers are what? A. 79 and 81.

Q. What quantity of zinc was delivered by the contractors under those requisitions?

A. Under requisition 79 the contractor delivered 5,084 pounds; under requisition 81—

Q. Take the one you first testified to.

A. The contractor delivered 4,121 pounds.

Mr. ALLEN.—79?

(Testimony of Edwin F. Meyer.)

A. Under 89, 4,121 pounds, and under 79, 5,084.

Mr. SHIPLEY.—What I want now, how much was accepted as compared with how much was—

A. Well, under 79, 2,804 pounds.

Q. Was what?

A. Inspected and passed, and 2,280 pounds rejected as being in excess.

Q. And what was the case of the other requisition?

A. 2,804 pounds passed inspection and 1,617 pounds billed “In excess.”

Q. Did you have any thing to do with the inspection and acceptance or rejection of the material under those requisitions? A. No, sir.

Q. Calling your attention to Plaintiff’s Exhibit “63” and “64” offered by the Government in this case, state what those transactions were, shown on that exhibit. [988—937]

A. “63” and “64” are Pay Office and yard copies of folder 358, dated March 6th, 1908. They cover 3,887 pounds of sheet zinc.

Q. What is the estimated price?

A. Estimated price is 12 cents.

Q. What information is given on the face of the requisition concerning that transaction?

A. But outside from the specifications we have—there is a notation here: “To cover material rejected under former requisitions on account of excess delivery. It is requested that W. A. Corder, Seattle, Washington, be given an opportunity to bid, to be delivered on the wharf, navy yard, Puget Sound,

(Testimony of Edwin F. Meyer.)

within fifteen days after date of award.”

Q. By whom was that prepared?

A. In the requisition office of the Storekeeper under my direction.

Q. State what appears on the other one.

A. Beg pardon?

Q. What is the other exhibit?

A. That is Pay Office copy. It is identically the same thing.

Q. Explain that transaction to the jury.

A. Well, it is a requisition 356, covers 3,787 pounds of sheet zinc. It is a transaction identically the same as the former one, requesting that—it is to cover an excess delivery from W. A. Corder Company, material that was delivered in excess of the amount called for on the previous requisition, and it was requested that this concern be given an opportunity to bid, along with other dealers.

Q. In the preparation of those two requisitions, did you make a new request that the article requisitioned for be purchased from any particular dealer?

[989—938]

A. No. sir.

Q. What estimate did you place on those requisitions? A. Twelve cents.

Q. What did the Purchasing Pay Office pay for that zinc as disclosed in those folders?

A. Paid 12½ cents.

Q. Did you have anything to do with that purchase? A. No, sir.

Q. Mr. Meyer, I call your attention to the evi-

(Testimony of Edwin F. Meyer.)

dence given in this case in the examination of Paymaster Spear regarding a telegram sent by the Storekeeper to the Bureau at Washington. I believe that is in exhibit "A." It is contract—

A. 12,653.

Q. 12,653 and 12,816.

Mr. MORRIS.—Here is exhibit "14," Mr. Shipley.

Mr. SHIPLEY.—All right.

Q. Calling your attention to Plaintiff's Exhibit "A," Mr. Meyer,—your Honor will have to pardon us; these exhibits have got scattered here so we can't get ahold of them readily. Examine that folder, please, Mr. Meyer, and state what it is.

A. Did you say Plaintiff's Exhibit "A"?

Mr. ALLEN.—"14," I think.

A. "14," yes.

Mr. ALLEN.—That is the toban bronze, I understand it?

The COURT.—Exhibit "A" is the telegram.

Mr. SHIPLEY.—I have to withdraw that because I haven't found the exhibit.

A. This is requisition number 649, dated May 23d, 1908.

Q. What does that relate to?

A. Calls for thirty-two items of supplies, items twelve to thirty-two [990—939] inclusive being toban bronze.

Q. And that is dated when? A. May 23d, 1908.

Q. And what was the cause of the preparation of that requisition?

(Testimony of Edwin F. Meyer.)

A. Stock for issue to Atlantic Squadron.

Q. Is there anything in there showing the purpose for which it was prepared?

A. That is right on the face of the requisition, sir.

Q. What does that state?

A. Stock for Atlantic Squadron.

Q. Were any of the battleships in these waters at that time?

A. I can tell you as near as I can remember, I think there were several of them here.

Q. What did you do with that requisition?

A. The requisition was prepared and sent through the navy yard, Mare Island. There should be something in here to show that.

Mr. MORRIS.—That is a letter in there, I think.

A. There was, I know.

Mr. SHIPLEY.—Isn't there a letter in there directed to the Storekeeper, navy yard, at Mare Island? A. I am looking for it, sir; yes, sir.

Q. Read it to the jury.

A. (Reading:) No. 649 N. S. F., May 25th, 1908. This is to the General Storekeeper, Navy Yard, Mare Island. Sir: The General Storekeeper respectfully transmits herewith Naval Supply Fund requisition number 649 covering certain articles required for issue to the vessels of the battleship fleet assigned this yard. Second, it is requested that such articles as can be spared from stock at Mare Island be shipped immediately under shipment order 1533-M, and all papers transmitted to the Bureau for further action. [991—940] Respect-

(Testimony of Edwin F. Meyer.)

fully, blank, Paymaster, U. S. N., General Storekeeper.

Q. By whom was this letter written?

A. It is written by me.

Q. From the Puget Sound Navy Yard.

A. Yes, sir.

Q. General Storekeeper's office? A. Yes, sir.

Q. What was the purpose or the occasion of writing that letter?

A. On along about May, the middle of May, when these requisitions were prepared, we were experiencing considerable difficulty in obtaining early delivery of articles through the local market, and there was a provision for obtaining supplies from Mare Island in the event of such a difficulty. This requisition was transmitted to the General Storekeeper at Mare Island with the request that the articles, if any he could spare, be shipped up here, and the rest of the material purchased, if obtainable, in the local market.

Q. Now, was that letter written to the Storekeeper of the Mare Island Navy Yard requesting the shipping of the supplies in furtherance of any conspiracy then existing between yourself and Kettlewell and Goldberg? A. No, sir.

Q. Is this the same toban bronze referred to by the Government in the presentation of its case in chief? A. This is the folder that was introduced.

Q. Mr. Meyer, did you consult either with Mr. Goldberg or Mr. Kettlewell in regard to the advisability of securing that toban bronze from the Mare

(Testimony of Edwin F. Meyer.)

Island Navy Yard instead of purchasing it here by open requisition so that Mr. Goldberg could get the chance [992—941] on it?

A. No, sir. It was a procedure adopted with the view to have it shipped from Mare Island rather than purchase.

Q. Mr. Meyer, at that time, if you had been engaged in any conspiracy to further the ends of Mr. Goldberg, Mr. Kettlewell and yourself by purchasing that toban bronze from the United States Government without fair competition and at an extortionate price, would you have written that letter?

A. No, sir.

Q. What estimate did you place on the requisition in that instance? A. 40 cents per pound.

Q. What price was it purchased at?

A. A small quantity of it was purchased at 30 cents; another, a large quantity, was purchased at 50 cents.

Q. Could Mare Island furnish those supplies?

A. None of it, sir.

Q. Is there any correspondence on that matter further than what you have read to the jury?

A. Yes, sir, there is some correspondence, copy of correspondence from the Bureau of Supplies and Accounts.

Q. Where?

A. Washington, D. C. (Reading:) First endorsement, August 21st, 1908. Respectfully returned to the General Storekeeper, Navy Yard, Puget Sound. 2—22 it is here. It is noted that the estimated price

(Testimony of Edwin F. Meyer.)

on N. S. F. requisition 649 was about 40 cents per pound, while the price on the attached bill and requisition is 50 cents per pound, an increase of 25 per cent over the estimated cost. Please inform the Bureau at what price award was made on N. S. F. requisition 649. J. S. Carpenter, assistant to [993—942] the Bureau. That was referred by the Storekeeper to the Purchasing Pay Officer.

Q. Is there anything further there, Mr. Meyer?

A. (Reading:) August 27, 1905. Navy Yard, Puget Sound, Washington. General Storekeeper. Requisition number 207, Naval Supply Fund, respectfully returned to the Bureau of Supplies and Accounts, inviting attention to award dated June 10th, 1908, to the Great Western Smelting & Refining Company under Naval Supply Fund requisition number 649. Referring to the second paragraph of the first endorsement, the records of this office show that award was made at fifty cents per pound. Paymaster, U. S. N., Storekeeper.

Q. Are there any other endorsements there?

Mr. ALLEN.—You said August 27, according to the stenographer's notes, 1905.

A. 1908. That is all in connection with that.

Mr. SHIPLEY.—Is there anything else in that folder concerning which you desire to make any explanation?

A. No, sir, that is all covered here. There is a telegram here. It is June 4th, 1908, copy of telegram to the Paymaster General, Navy Department, Washington, D. C. (Reading:) Supply Fund requi-

(Testimony of Edwin F. Meyer.)

sition 649, bids total \$1119, request authority place award. Urgent for battleships. Blank Paymaster, U. S. N., General Storekeeper.

Q. Where was that telegram sent from?

A. Storekeeper's Office, Puget Sound, to the Bureau of Supplies and Accounts at Washington, D. C.

Q. Is there any answer to that?

A. No, sir. The answer would go to the Purchasing Pay Office with authority to purchase. [994—943]

Q. After the failure to secure the supplies from the Mare Island yard then this requisition was issued?

A. No, sir. The requisition itself was forwarded to Mare Island in the first place to request that if they could furnish the articles it would be shipped up right away from Mare Island, if not, the requisition would be forwarded from Mare Island to the Bureau of Supplies and Accounts for the approval of the Paymaster General of the Navy.

Q. Now, was that course that was taken in this particular instance? A. Yes, sir.

Q. The requisition was forwarded to the Mare Island Navy Yard, then, and directed to the Bureau of Supplies and Accounts, Washington, D. C.?

A. Yes, sir, but the formal approval required some time, and in view of the exigency the Bureau was telegraphed to approve it by wire.

Mr. ALLEN.—You say you telegraphed?

A. The Bureau was telegraphed; the Storekeep-

(Testimony of Edwin F. Meyer.)

er's office telegraphed.

Mr. ALLEN.—The telegram went from you, then?

A. Yes, sir, from the Storekeeper's office.

Mr. SHIPLEY.—Then the answer to that telegram would go, or did go in this case, to whom?

A. There is nothing here to show to whom it was sent.

Q. To whom was the authority sent to make this purchase under this requisition?

A. To the Purchasing Pay Officer in Seattle.

Q. That was an authorization that came directly from the Bureau at Washington? [995—944]

A. Yes, sir.

Q. To the Purchasing Pay Office in Seattle?

A. Yes, sir.

Q. And with that did you have any connection?

A. No, sir.

Q. If the Mare Island Navy Yard had been able to furnish the supplies for this toban bronze, then would there have been any further action taken on this open purchase requisition?

A. No, sir, it would have been indicated on the face of the requisition that they had furnished it.

Q. And that would end the proposition to purchase the bronze?

A. Yes. We would have received the material and that would have closed it.

Q. And under those circumstances the Great Western Smelting & Refining Company would not have had an opportunity to become the purchaser?

A. No, sir. [996—945]

(Testimony of Edwin F. Meyer.)

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants Edwin F. Meyer and Emar Goldberg. Vol. 6, Pages 787 to 945. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [997]

EDWIN F. MEYER on the stand.

Direct Examination (Resumed).

(By Mr. SHIPLEY.)

Q. Calling your attention to a folder marked Defendants' Exhibit "A," I will ask you to examine that folder and state generally what it is.

A. This is a folder, contract number 12,653, entered into by the Navy Department at Washington, D. C., with the Central Metal & Supply Company.

Q. What year?

Mr. MORRIS.—Mr. Meyer, I can't hear you; I don't know whether the jury can or not.

A. It is a contract number 12,653, dated January 24th, 1910, entered into by the Navy Department at Washington, D. C., with the Central Metal & Supply Company of Lombard Street, Baltimore, Maryland.

Mr. SHIPLEY.—It has been admitted for identification? A. It is admitted, sir.

Mr. SHIPLEY.—We desire to offer that in evidence at this time.

Q. This is from what branch of the Navy, this folder? A. Yard files.

Q. It is a record of the General Storekeeper's Office, is it? A. Yes, sir.

Q. This one of the folders that was produced by

(Testimony of Edwin F. Meyer.)

the Government pursuant to your request?

A. Yes, sir.

Mr. SHIPLEY.—We offer this in evidence as Defendants' Exhibit "A."

Mr. MORRIS.—See if that is not an exhibit in the case.

A. It has been admitted; it is noted there. [998—946]

Mr. SHIPLEY.—Yes, it is admitted, I remember.

Q. Mr. Meyer, are any transactions disclosed in that file pertaining to excess delivery, or action by the authorities disclosed in that file?

A. No, sir, nothing in here about excess deliveries.

Q. What is the matter covered in this file?

A. Shall I read this?

Q. Yes.

A. It is a telegram from the Storekeeper's Office at Bremerton to the Illinois Zinc Works, Peru, Illinois. (Reading:) Navy Yard, Puget Sound, Washington, February 18th, 1910. Illinois Zinc Company, Peru, Illinois. Please wire price f. o. b. Bremerton, Washington, on a shipment 25,000 pounds sheet boiler zinc, size 1½ inch by 6 by 12, similar recent order Central Metal & Supply Company. Urgent. Advise earliest date can ship if ordered. Official business government rate pay. Paymaster, U. S. N., General Storekeeper.

Mr. ALLEN.—Did you read the date on there?

A. February 18th, 1910. There is a note here. This is to Illinois Zinc Company; reply from Central Metal & Supply Company.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—By whom was that telegram written, if you know?

A. It was written by me, sir.

Q. Describe to the jury the transaction, how it originated, and what the purpose of this correspondence was.

A. Well, we at this particular time, February 18th, we were in the market for a large quantity of boiler zinc for the use of the vessels then in the harbor at Puget Sound Navy Yard. In looking over the records I found that a shipment, a contract, had been entered into with these Baltimore people, the Central Metal & Supply Company, but that shipment would be made from the [999—947] Illinois Zinc Company; that is the factory in the middle west. Realizing that the price, the local price, was high on zinc, I communicated directly with the manufacturer in an effort to get the zinc from him, if possible. This telegram was the result of it, asking him to wire price delivered f. o. b. Bremerton of a car of zinc. I read here from a telegram received, not from the Illinois Zinc Works, but from the Central Metal & Supply Company. It was in reply to the telegram I sent. (Reading:) It is Baltimore, Maryland, February 19, 1910. General Storekeeper, U. S. Navy Yard, Puget Sound, Washington. Referring telegram Illinois Zinc Company, quote zinc plates specified, delivery navy yard immediate shipment rail \$8.90, by steamer \$8.70 per hundred. Central Metal & Supply Company. 9:51 A. M. Commandant's Office received February 19th, 1910, Navy Yard,

(Testimony of Edwin F. Meyer.)

Puget Sound, Washington.

Mr. ALLEN.—And what is the date of this telegram? A. February 19th, the following day.

Mr. SHIPLEY.—Is there anything further?

A. Yes, sir. Immediately upon the receipt of that telegram I wired the Paymaster General of the Navy. (Reading:) Navy Yard, Puget Sound, February 19, 1910. Paymaster General, Navy Department, Washington, D. C. Referring to class 52, contract 12,653, boiler zinc required for Tennessee and Washington, contractor reports can ship like order by rail immediately at \$8.90. Request amendment of contract to cover immediate shipment, order to be followed by wire tracer. Recommend waiver inspection at works. Cost local purchase prohibitive.

Mr. ALLEN.—That is dated what date?

A. February 19, 1910. Then I have a note here in pencil. (Reading:) Bureau contract 12,653, Bureau contract 12,816.

Mr. SHIPLEY.—What do those memorandums relate to?

A. Notes that I made from time to time showing what followed. Bureau contract 12,653 is the contract on which the Bureau at [1000—948] Washington originally bought the zinc, and contract 12,816 refers to the contract which was the result of this contract that was sent to the Bureau. I have a note here also, this cost 11½ to 12½ cents from Seattle contractors.

Q. When was that written on there?

A. Sometime after the telegram was sent. I don't

(Testimony of Edwin F. Meyer.)

know just about—I made the note on there, I think, for the information of the office.

Q. Information of what office?

A. The Storekeeper's office; that the material was costing 11½ to 12¢ in Seattle, and by taking this action we got it for 8 cents at least.

Q. What do you mean in that letter by the statement "Local price prohibitive"?

A. Well, it was high.

A. All zinc purchased locally had been costing from 10½ to 16 cents. The average price would be probably about 12 or 12½ cents, and in taking this step we desired to get it as cheap as possible.

Mr. SHIPLEY.—Any further matters in that folder you desire to call to the attention of the jury?

A. No, sir; except the material was subsequently contracted for on that contract there.

Q. What is that, Mr. Meyer?

A. No, sir; that closes this transaction. We opened, then, another folder, which is that 12,816.

Q. (Handing the witness navy yard folder containing contract number 12,816, marked Defendants' Exhibit A-23.) I will ask you of the transaction disclosed by that file relates to the subject matter of the letter and telegrams to which you have just been testifying.

A. This is the result of that telegram. The Bureau then entered [1001—949] into a contract with the Central Metal & Supply Company to furnish that 25,000 pounds of zinc, and they have a note—it is contract number 12,816, February 26th, 1910, to be

(Testimony of Edwin F. Meyer.)

shipped immediately, mill inspection waived.

Q. By whom was that put on there?

A. By the Bureau at Washington.

Q. For what purpose, what was the effect of that endorsement?

A. They waived the inspection at the mill in order to get the material out here in a hurry.

Q. Did you say an exigency existed at that time?

A. Yes, sir. "Tennessee" and "Washington" were waiting for the zinc.

Q. Was it an ordinarily customary procedure for the Government in ordering material of that character from the eastern factories, to waive or dispense with factory inspection?

A. Only in a case of emergency, I think, sir.

Q. Did anyone, other than the authorities in Washington, D. C., have power to dispense with that kind of inspection? A. No, sir.

Q. That was not a matter that you, or the General Storekeeper at the Puget Sound station, had any supervision or control over?

A. We did suggest that that be done; the Bureau at—

Q. I say, you didn't have any control over it?

A. No, sir.

Q. All you could do was to suggest the emergency or exigency to—the Department in Washington, had to exercise their discretion? A. Yes, sir.

Q. You can proceed on anything further.

A. That contract was entered into February 26th, and there is nothing in here but correspondence be-

(Testimony of Edwin F. Meyer.)

tween the Storekeeper and the contractor requesting that the car be traced and rushed [1002—950] through, considerable of that here.

Q. Directed to what purpose, and for what effect?

A. Purpose of getting the material delivered as soon as possible.

Q. Of tracing the car and expediting the delivery?

A. There is a telegram here to the navy yard (reading): Bureau of Supplies and Accounts, Washington, D. C., February 25th, 1910. Navy Yard, Puget Sound, Washington—

Mr. RIDDELL.—I don't think that is in evidence. I think you ought to be a little careful. That isn't in evidence.

Mr. SHIPLEY.—Then we ask to have it admitted, your Honor. It relates to the same subject matter. The other was admitted, and I supposed the two were admitted together. It is part of the same transaction concerning which folder "A" was admitted.

Mr. ALLEN.—Your Honor has let in the other, and I see no reason why this should not be admitted. If they have any materiality those two ought to go in together.

Mr. SHIPLEY.—That is the reason I am offering them at this time.

The COURT.—Admitted.

(Folder referred to received in evidence and marked Defendants' Exhibit "A-23.")

Mr. SHIPLEY.—This contract was entered into by reason of the proceedings in folder "A"?

The COURT.—Marked "A-23." That has not been admitted.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—Yes, we are just offering it, your Honor.

Mr. ALLEN.—If this is the folder that properly follows the other it probably belongs in here.

Mr. SHIPLEY.—The other was exhibit “A,” which was admitted the other day,—

The COURT.—Then it is admitted. [1003—951]

Mr. SHIPLEY.—This contract was entered into by reason of the proceedings in folder “A,” or resulted in the entering into of this contract.

Mr. RIDDELL.—This is the same contract, Mr. Shipley?

Mr. SHIPLEY.—It is the same contract that was entered into by reason of the other in exhibit “A.”

The COURT.—Exhibit “A-23” has been admitted.

Mr. SHIPLEY.—Did you say there was a telegram in there?

A. Yes, sir; from the Bureau, Navy Department, Bureau of Supplies and Accounts, Washington, D. C. (Reading:) February 25, 1910. Sir: The Bureau hereby confirms its telegram of even date as follows: Navy Yard, Puget Sound, Washington. Replying telegram 19, Bureau has placed order with Central Metal & Supply Company for immediate shipment from Illinois 25,000 pounds rolled sheet boiler zinc plates 12 by 6 by $\frac{1}{2}$ inches, navy standard quality, containing not less than 99 per cent pure zinc, same as class 52, schedule 259, at 089 cents per pound. Factory inspection waived. Contract 12,816 forwarded to cover. Night rate. Respectfully, E. B. Rogers, Paymaster General, U. S. Navy.

(Testimony of Edwin F. Meyer.)

Q. The contract, Mr. Meyer, was entered into where? A. At Washington, D. C., sir.

Q. Did this office here, meaning the General Storekeeper's office, have anything to do with the actual contract, letting of contract?

A. No, sir; only putting the facts before them.

Q. I mean the contract itself? A. No, sir.

Q. And was entered into by the Bureau at Washington between the party that shipped the material? [1004—952] A. Yes, sir.

Q. And does this record disclose anything about the time of delivery?

A. Well, it is the next paper here, is a telegram sent by the Storekeeper to the Central Metal & Supply Company, Baltimore, Maryland. (Reading:) February 26th, 1910. Please advise collect date and point of shipment, route and car number boiler zinc plates, contract 12,816, and arrange for each connecting line to advise me date of receipt and how forwarded. Official business, Government rate, pay.

Q. Anything further there following that same matter?

A. There is another telegram of March 7th, 1910. (Reading:) Illinois Zinc Company, Peru, Illinois. Please wire collect date shipment, route and car number Boiler zincs Central Metal & Supply Company contract 12,816. Urgent. Rush tracer. Storekeeper. Official business, Government rate pay. Telegram from the Illinois Zinc Company: (Reading:) Peru, Illinois March 7th, 1910. General

(Testimony of Edwin F. Meyer.)

Storekeeper, Navy Yard, Puget Sound, Washington. Zinc plates, contract 12, 816, shipped March 5th Rock Island care of Chicago, Milwaukee & Puget Sound at Minnesota transfer in C. B. car No. 2129. Illinois Zinc Company. Telegram: (Reading:) Baltimore, Maryland, March 8th, 1910. General Storekeeper, Navy Yard, Puget Sound, Washington. Contract 12,816 shipped Peru, Illinois, seventh, Rock Island care of Chicago, Milwaukee & Puget Sound Railroad, C. B. car 2129. Central Metal & Supply Company. 846 a. m. Collect, Government. And subsequent correspondence to the transportation companies asking them to trace the car.

Q. Mr. Meyer, what was the occasion, if any, existing for the sending of all of these telegrams and communications concerning the shipment or routing of this shipment of zinc?

A. There is a document in here which might explain that, sir. [1005—953]

Q. Read it.

A. (Reading:) March 8th, 1910. Gentlemen: This is to the Chicago, Milwaukee & Puget Sound Railway freight department, Seattle, Washington. I have just received a wire from the Illinois Zinc Company at Peru, Illinois, that a car containing 25,000 pounds of rolled zinc plates was shipped by them to this navy yard, in C. P. car No. 2129. Shipment left Peru March 5th, 1909, routed via Rock Island care of Chicago, Milwaukee & Puget Sound at Minnesota transfer. A part of the contents of this car is urgently needed for issue to the U. S. S. "Pennsylvania" be-

(Testimony of Edwin F. Meyer.)

fore her departure on or about the 16th instant, and will thank you to start telegraphic rush tracer after car, being in constant touch therewith until delivery at destination. I would also consider it a favor if you would notify this office daily of the location of the car. Kindly give this matter your personal attention and advise me what are the chances for delivery within the time stated. Respectfully, blank Paymaster, U. S. N., acting General Storekeeper.

Q. Who dictated that? A. I did, sir.

Q. For what purpose?

A. For the purpose of getting the zinc on the navy yard at the earliest possible moment.

Q. Mr. Meyer, at the time you initiated this purchase and wrote the letter to the authorities in Washington, D. C., calling attention to this price of zinc and the prohibitive character in this market, was there anything to have prevented you purchasing that zinc by open purchase requisition just in the same manner as was done in the case of requisition 438?

A. The ordinary procedure in that case would have been the preparation [1006—954] of an open purchase requisition.

Q. The ordinary procedure would have been that?

A. Yes, sir.

Q. And that 438 referred to is the one that is now being investigated upon this trial? A. Yes, sir.

Q. At the time of your initiating this purchase through this channel from the east, were you in any improper combination or conspiracy with Mr. Gold-

(Testimony of Edwin F. Meyer.)

berg, or Mr. Corder, or Mr. Kettlewell, to perpetrate a fraud upon the United States Government in the purchase of this zinc?

Mr. ALLEN.—This is in January or February, 1910.

A. No, sir.

Mr. SHIPLEY.—Mr. Meyer, I call your attention to a letter that was introduced, I believe, as a part of exhibit “A,” in which counsel for Mr. Goldberg, I believe, made the offer, and the attention of Paymaster Spear was called to a signature. Is that in that folder or in exhibit “A”?

A. No, sir; that letter is in a separate exhibit.

Q. Oh, that is a separate exhibit? A. Yes, sir.

The COURT.—“A” was a telegram.

Mr. SHIPLEY.—You recall the transaction to which I refer? A. I do, yes, sir.

Q. I wish you would explain that matter to this jury, how that letter came to be written, and how the signature of Paymaster Spear came to be attached to it.

A. Well, there is of necessity considerable correspondence in the Storekeeper’s Office emanating at the desk of various clerks that are merely routine and perfunctory; they are written daily. A part of these letters would be, for instance, the “Follow-up-system.” [1007—955] We had a card index system, by means of which the award clerk would from day to day notify the respective dealers of the delay in the receipt at the navy yard *of the delay in the receipt at the navy yard* of the material which had

(Testimony of Edwin F. Meyer.)

previously been ordered from them. By that means we kept in daily contact with the various dealers all over the country. This award clerk would write sort of a stereotyped letter, calling attention of the dealers to the fact that material had not been delivered, or, if delivered and rejected, it had not been replaced. Frequently the storekeeper would not be in the office in the afternoon. Rather than hold up those merely perfunctory routine letters which involved no responsibility, when the letter was placed on my desk, rather than delay it a matter of twenty-four hours, I would write the Storekeeper's name to them and initial it "M," Meyer, showing that the responsibility was with me, and would send the letters out. I remember in the spring of 1908 the Paymaster was off the navy yard maybe two or three days at a time. I think he was in Spokane once for about a week, if I am not mistaken. It wouldn't be expected, I imagine, the mere routine work would be held up.

Mr. SHIPLEY.—What would have been the result on the routine of the office if there had been no persons present to have sent out this character of letter that you have just described to the jury?

A. Well, it would cause a delay.

Mr. SHIPLEY.—Mr. Meyer, what had been the custom and practice in the Storekeeper's office covering the matter concerning which you have just been testifying previous to the assignment of Paymaster Spear to the duties of General Storekeeper at Bremerton?

A. It was the rule that matters of that kind, merely

(Testimony of Edwin F. Meyer.)

routine matters [1008—956] which were not official, say, correspondence with contractors that involved no order or responsibility, that we would—matters of that kind would be forwarded, in the event the Storekeeper was not in the office, rather than delay the matter it would be forwarded out by the Chief Clerk, or someone else.

Q. And who at that time ranked next to the Paymaster in charge in that particular department, say, in the years 1907 and the early part of 1908?

A. I did, sir.

Q. And under whose supervision would the sending out of such correspondence, and under whose would it fall and did fall at that time?

A. Under my supervision, sir.

Mr. ALLEN.—He answered it was the rule. You know if it was the written rule the rules would be the best evidence.

Mr. SHIPLEY.—State the practice. State to this jury what the facts were during the year 1907 what was done.

A. Well, the facts were that any circumstances of that kind I just described, where the letters—the absence of the Storekeeper would involve a delay—

Mr. SHIPLEY.—Mr. Meyer, answer the question.

A. During the time Paymaster Brooks was here, during 1907, it was the rule of the office all these matters be forwarded without delay, and not held up awaiting his presence in the office, insignificant matters.

(Testimony of Edwin F. Meyer.)

Q. What was the practice following the arrival of Paymaster Spear up to the time of the issuance of the particular letter concerning this the United States Attorney asked Paymaster Spear, in the presence of this jury, whether his name was signed to that by him or by his authority? [1009—957]

A. I, of course, continued the practice which had been in vogue. As I recall, Paymaster Spear, upon his arrival, told me there would be no departure from any of the ordinary customs which had been in vogue until he had become fully acquainted with the conditions there, and those conditions continued to exist until he from time to time made changes that he saw or thought necessary.

Q. And at the time the particular letter was written by you, why was Paymaster Spear's name signed to that letter by you, adding the initial "M"?

A. Well, as I stated, the matter was just a call on the contractor to perform his obligation, his contract, and was merely a routine letter that involved no responsibility on anyone, and all of those letters, or similar letters, might be—his name might have been put in by the messenger in the office, or anybody, so long as it was of that form, that type.

Q. What did the initial "M" indicate on that letter, and why was it affixed to the signature of the Paymaster?

A. It was "M," indicating that I had—I was responsible for the letter.

Q. Was that put there for the purpose of deceiving anybody? A. Indeed not, sir.

(Testimony of Edwin F. Meyer.)

Q. Recurring to the telegram which you read to the jury in one of the exhibits you have just been handling in reference to the price of zinc being prohibitive in the local market, I will ask you if Paymaster Spear was at Bremerton at that time, if you remember.

A. Why, he said he was not, and the telegram—it has at the bottom of it “P. A., Paymaster, Assistant General Storekeeper.” It follows, therefore, that the assistant to Paymaster Spear was then in charge of the office. [1010—958]

Q. That was during the absence of the Paymaster himself? A. Yes, sir.

Q. Mr. Meyer, in the matter of the purchase of the particular zinc under the contract disclosed by the two folders, what was the result as to a saving or a loss to the Government as the result of that purchase upon your recommendation, as shown by exhibit “A” and “A-23.”

A. Zinc on contract 12,816 was purchased at eight or nine or ten cents. The prevailing local price to the Government of zinc was approximately 12 cents, a saving of a little more than three cents per pound on 25,000 pounds.

Q. Were those two folders brought in by the Government in this case? A. No, sir.

Mr. SHIPLEY.—How did you get them?

A. I gave Mr. House the numbers and asked him to bring them in.

Q. During the proceedings of the trial?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, there has been some testimony in regard to red slips, or tags, being attached to papers requiring the signature of the Paymaster. I believe it was Mr. McNeil who was examined by Mr. Riddell on that question. State what the facts are in regard to that.

A. Well, during the time I acted as Chief Clerk, whenever any matter—it was necessary to bring any matter particularly to the Storekeeper's attention, I invariably either called his attention to it personally or would put a piece of pad I had on the desk, not red, but white paper. I did not have at any time a red, any red paper. I would write a little note on this pad and attach it to the requisition, or other instrument, calling his attention to some particular fact that needed his attention [1011—959] in that particular.

Q. And that practice continued up to what period?

A. I remember very distinctly that after Mr. Barnes, who succeeded me as Chief Clerk, after he came he bought some red paper.

Q. And that was in what year, what month?

A. Why, I don't know. It was after his arrival here.

Q. Well, about when did he arrive?

A. After October, 1908. Well, I don't say after October, sometime on or about September or October.

Q. And at the time requisition 438 was issued the custom of attaching red tags was in vogue or not?

A. It was not in vogue, sir. I frequently wrote on the fact of the requisition in red ink.

Q. For what purpose?

(Testimony of Edwin F. Meyer.)

A. Well, in the case of requesting that advertisement be waived red ink was noted on the face of it.

Q. And that red ink, was that placed there for the purpose of attracting the attention of the Paymaster and the Bureau officials at Washington?

A. Yes, sir.

Q. That was the clause referring to the circumstance of an exigency and the purchase without advertising?

A. Requesting advertising be waived.

Q. And that was written in by your own hand?

A. My own handwriting after the paper was prepared by the clerk and put on my desk I took red ink and wrote on the face of it these remarks.

Q. The body of the requisition, was that prepared on the typewriting machine?

A. Yes, sir. [1012—960]

Q. And this writing by pen in your hand in red ink would attract the attention of the Paymaster and the higher officials, and was written on this requisition prior to the time it left your desk in being passed up to Paymaster Spear's desk?

A. Yes, sir.

Mr. ALLEN.—This is 438?

Mr. SHIPLEY.—Yes, sir, 438.

Mr. ALLEN.—All right. A. Yes, sir.

Mr. SHIPLEY.—The same procedure as was shown in requisition 490?

A. Identically.

Q. Mr. Meyer, a reference has been made in this case to a card index. State the facts in regard to that from your personal knowledge.

A. Well, there are from, anywhere from twenty-five to seventy-five thousand items of stores in the Storekeeper's Department, and prior to the year

(Testimony of Edwin F. Meyer.)

1908 the stock was maintained by the various yard departments, five in number. We made no attempt to keep up the stock of but a few items, but subsequent to that time it developed upon the Storekeeper to do it, therefore it was necessary to establish a system by means of which reference could be made readily to any one of those items. During the early part of 1908 and prior to that time we had no such system, but after I was relieved of duties of Chief Clerk and given the charge of the Requisition Clerk, and therefore had more time to devote to that work, I began working up and working back the requisitions in order that the history of any article in store could be had readily without having to waste too much time in finding it. That system was a card for each and every item in stock arranged along a classification, and then sub-classified [1013—961] alphabetically.

Q. Mr. Meyer, there was some testimony introduced before the jury by the witness George Lockwood, a witness that was called by the Government, in regard to a conversation with you relative to shortage in certain shipments, certain amounts of weight, at the navy yard. State to the jury the facts in that matter.

A. Well, I recall that during the—on or about the time that he spoke of, there were numerous complaints brought into the Storekeeper's Office, some personally and some by letters, of shortage in weight. The weights reported by the Receiver at the navy yard would be less than the weights shipped over there, or claimed to have been shipped, and on one

(Testimony of Edwin F. Meyer.)

or more occasions I personally went down and saw Mr. Lockwood and asked him if it was not a fact that his scales needed testing. We hadn't had them tested for quite a while prior to that time; in fact, I don't recall they were ever tested prior to that time.

Mr. ALLEN.—Prior to which time, Mr. Meyer?

A. Before 1908, say. Because it was subsequent to that time that Paymaster Spear requested the preparation of a requisition for testing the yard scales, all of them. And the occasion in question was where the—

Mr. SHIPLEY.—You say the occasion in question?

Q. This letter that was introduced here. That was testified to by Mr. Lockwood?

A. By Lockwood, yes, sir. The Great Western Smelting & Refining Company—

Mr. ALLEN.—Is that an exhibit?

Mr. MORRIS.—Now, handing you Defendants' Exhibit "R." That is in evidence. Defendants' Exhibit "R," I think, your Honor, was admitted in evidence. If it is not we move for its admission.

[1014—962]

The COURT.—"R" has not been admitted.

Mr. SHIPLEY.—What is that folder?

A. This is Storekeeper's folder, being contract 10,058. The original of this letter was referred to by Mr. Schlesinger, I believe.

Mr. ALLEN.—How is that identified on the back?

A. "R."

Mr. SHIPLEY.—Defendants' "R" for identification.

(Testimony of Edwin F. Meyer.)

A. But there is somewhere among the exhibits here the original of this letter.

Q. I see. We offer this folder, your Honor please, at this time, showing the letter in connection with the entire transaction, which has already been gone into by the introduction of one of the other copies of the letter.

The COURT.—Is that the Spear letter?

A. That is the copy of Paymaster Spear's letter; the original is with the contract.

The COURT.—The Spear letter is identified as Defendants' Exhibit "B," a letter of January 9th, 1909. That is admitted; the letter is in evidence; but folder exhibit number "R" has never been offered.

Mr. SHIPLEY.—We will offer it, your Honor.

The COURT.—If it is the letter you desire, the letter is already in evidence.

Mr. SHIPLEY.—Let the record show, your Honor, this exhibit is admitted.

The COURT.—Admitted.

(Folder referred to received in evidence and marked Defendants' Exhibit "R.") [1015—963]

Mr. SHIPLEY.—Mr. Meyer, refer to the contents of the folder and read to the jury.

A. This is a contract made by the Navy Department, Bureau of Supplies and Accounts, number 10,058, with the Great Western Smelting & Refining Company.

Mr. MORRIS.—What is the date?

A. October 27th, 1909. The folder isn't correct.

Mr. ALLEN.—The folder isn't correct?

(Testimony of Edwin F. Meyer.)

A. No, sir as to date. The contract is dated October 23d, 1908. The folder is incorrect in that respect. That is the notation on the outside of the folder.

Mr. SHIPLEY.—That is, you mean the record that is written out on the face of the folder?

A. Yes, sir, it is a clerical error.

Mr. SHIPLEY.—Read the contract and give the date as shown on the original.

A. It calls for, reading the contract, to be delivered at navy yard, Puget Sound, Washington, class 219, 100,000 pounds, about, inga copper, per hundred weight \$13.49 total \$13,490. (Reading:) Bureau requisition 45, Naval Supply Fund, Schedule 474, to be delivered at the navy yard as specified below, deliveries at each navy yard to commence within thirty days and to be completed within sixty days after date of contract, or under such other time of delivery as may be stated by the bidder, to be delivered at the Navy Yard, Puget Sound, Washington, class 219.

Mr. ALLEN.—I wanted you to read the upper part so they would know—

A. I read that just before that.

Mr. ALLEN.—Great Western Smelting & Refining Company?

A. Great Western Smelting & Refining Company.

A. (Continuing.) All of the above copper to be refined and of the [1016—964] best quality, and to be free from other metals, sulphur and other impurities; to show on analysis not less than 89.8 per cent pure copper, and to be delivered in 20-pound

(Testimony of Edwin F. Meyer.)

ingots, and ingots of larger size cannot be accepted. Award will be made to lowest bidder on each of the above classes. It is further provided that the bidder to whom contract on class 219 may be awarded shall agree to make shipment of the material by American lines of transportation, and so forth. Respectfully, E. B. Rogers, Paymaster General, U. S. Navy. To General Storekeeper, Puget Sound.

Mr. ALLEN.—What is the amount there?

A. 13,490 pounds. There is a letter in a folder under a letter-head of the Great Western Smelting & Refining Company, smelters and refiners of metal, 1924 Nineteenth Avenue South, Seattle. (Reading:) Emar Goldberg, manager, Seattle, Washington. December 11th, 1908. Mr. Ray Spear, General Storekeeper, Puget Sound Navy Yard, Bremerton, Washington. The writer has at different times taken up with you the matter of shortage. On our contract number 1058, requisition 45, we have made several deliveries, and practically every delivery is reported short. While we admit we are liable to make a mistake once in a while, it does not seem reasonable that we would make a mistake in every weight. We have yours of December 4th giving us a shortage of 24 pounds on our delivery of November 24th, and a shortage of 8 pounds on our delivery of February 26th. Yours very truly, Great Western Smelting & Refining Company, Emar Goldberg.

Now, upon receipt of that I took the matter up with the storeman, the man who weighed the material.

Mr. SHIPLEY.—To whom do you refer?

A. Lockwood. [1017—965]